

THE
LAW OF LICENSING
INTOXICATING LIQUORS

THEATRES AND MUSIC HALLS

WILLIAMSON

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Before the LORD CHIEF JUSTICE and Justices WILLS
and CHANNELL. 10.7.03.

WHIST DRIVES AT HOTELS.

Law Reporting

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The legality or otherwise of a private club holding a whist drive for prizes at an hotel was argued on appeal from the Yorkshire justices. Mr. D. A. Lockwood, of the Crescent Hotel, Filey, was in March last fined £1 (including costs) for an alleged contravention of Section 17 of the Licensing Act of 1872, in that he allowed a party of ladies and gentlemen, calling themselves the Filey Indoors Games Club, to have a whist drive in a room on his licensed premises, hired by them. Prizes subscribed for by outsiders were offered. They included a couple of clocks (one said to be valued at 31s.), photo-frames, and a scent bottle.

In supporting the appeal, Mr. Danckwerts, K.C., (with him Mr. Stutfield, instructed by Mr. Hiscott, agent for Mr. Tasker Hart, of Scarborough), said: The question here is whether a whist drive—

The Lord Chief Justice: What is a whist drive?

Mr. Danckwerts: I understand it is this: A number of persons agree to play several games at whist in lots. They change partners during the course of the proceedings, and at the end of the games the persons who have secured the highest number of points get the prizes.

Mr. Justice Wills: It is what is commonly called progressive whist.

Mr. Danckwerts: I believe so.

The Lord Chief Justice jocularly observed that he took it that Mr. Justice Wills and Mr. Justice Channell knew all about it.

Proceeding, Mr. Danckwerts said that, according to his reading of the authorities, gaming could only be unlawful where the parties taking part could be either winners or losers. In this case they could not lose any of their own money, as they staked nothing, the prizes being provided by strangers. This, according to Lord Campbell, was not gaming. He submitted, therefore, that the conviction should not stand.

Mr. Montague Lush, K.C. (with him Mr. Cautley, instructed by Mr. Bickersteth, clerk of the peace for the East Riding of Yorkshire) appeared for the other side. He contended that it was not necessary, in order to make a thing gaming under this Act, that the players should stake anything, and that a licensee was not allowed to suffer any game of mere chance to be played on his licensed premises.

The Lord Chief Justice thought the point which the magistrates wished to raise was whether playing without stakes a game of skill or chance not in itself unlawful came within the section. He thought it did not, and that the conviction should be quashed.

The other judges concurred, and the appeal was accordingly allowed with costs.

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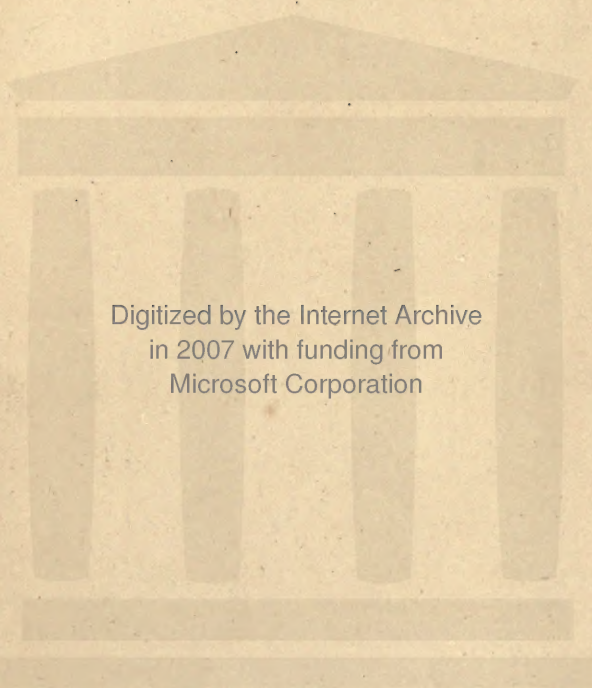
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THE LAW OF LICENSING.



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THE
LAW OF LICENSING
IN ENGLAND

SO FAR AS IT RELATES TO THE
RETAIL SALE OF INTOXICATING LIQUORS
AND TO
THEATRES AND MUSIC HALLS.
WITH A FULL
APPENDIX OF STATUTES AND FORMS.

BY
JOHN BRUCE WILLIAMSON,
⁽¹¹⁾
OF THE MIDDLE TEMPLE AND NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW,
FORMERLY SCHOLAR OF BALLIOL.

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PREFACE.

THIS book is an attempt to express, in a concise but comprehensive manner, the present law of England in regard to the retail sale of intoxicating liquors and the licensing of theatres and music halls. As the retail sale of liquor is regulated by a highly complex system of statute law, the appendix of statutes has been made as full as possible to enable practitioners to easily consult the Acts referred to in the text.

Special care has been taken in the preparation of the index.

J. B. W.

TEMPLE,
May, 1898.

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INTRODUCTION.

GENERAL VIEW OF THE STATUTES REGULATING THE RETAIL SALE OF INTOXICATING LIQUORS.

THE regulation of the sale of intoxicating liquors in England has long engaged the attention of the legislature. Such sales are either sales by dealers or by retailers. The enactments relating to the wholesale trade have been principally directed to raising revenue from the traffic; but in the case of sales by retail (especially where such sales are for consumption on the premises), Parliament has long recognised that other than purely fiscal considerations come into play, and that, in the interests of public morals and public order, restrictions must be placed upon the conduct of such sales and the management of the houses in which they are carried on. Thus, with regard to the retailing of intoxicating liquors, a complex system of statute law has grown up which has no application to wholesale dealing, and under which a license or certificate obtained from the justices has, in nearly all cases, become an indispensable preliminary to the granting to retail sellers of that excise license without which, except in a few privileged cases, no person can lawfully sell any intoxicating liquor.

The earliest statute now in force giving the justices control over the retail sale of liquor in England is the Alehouse Act, 1828 (9 Geo IV. c. 61); but, before considering that statute in detail, it will be useful to briefly indicate the purport of the enactments which preceded and led up to the passing of that Act.

As early as the reign of Edward VI. the necessity for imposing some check upon the indiscriminate sale of intoxicating liquors was recognised by Parliament, and it was enacted (5 & 6 Edw. VI. c. 25, § 1) that none should be admitted or suffered to keep any common alehouse or tippling house but such as should be thereunto admitted and allowed in the open sessions of the peace, or else by two justices. A series of subsequent statutes still further controlled the traffic by prescribing the times when, the mode in which, and the persons to whom certain intoxicating liquors might be sold by alehouse keepers (1 Jac. I. c. 9; 4 Jac. I. cc. 4 & 5; 7 Jac. I. c. 10; 21 Jac. I. c. 7; 3 Car. I. c. 3; 9 Geo. II. c. 23). Provision was made that justices personally interested in the trade should not adjudicate upon the granting of licenses (26 Geo. II. c. 13, § 12), and a general licensing day was appointed to be held annually (26 Geo. II. c. 31; 32 Geo. III. c. 59; 4 Geo. IV. c. xxv.). The sale of wine by retail for consumption on the premises was also prohibited, except by persons holding a justices' ale and beer license (32 Geo. III. c. 59, § 9).

Such was the general effect of the legislation dealing with the licensing jurisdiction of justices prior to the Alehouse Act, 1828. That Act, the most important provisions of which are still in force, regulated the mode in which the justices were to exercise their jurisdiction in hearing applications for the grant or transfer of licenses to persons keeping or about to keep inns, alehouses, and victualling houses; and provided that no excise license for the sale of any exciseable liquors by retail to be drunk or consumed on the premises where sold should thereafter be granted, except to the holder of a license granted by justices of the peace.

The words "exciseable liquors" in this Act include "any ale, beer, or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise" (§ 37).

This Act only dealt with one license, the alehouse or publican's license, which every person desiring to sell any exciseable liquor by retail for consumption on his premises was required to obtain from the justices.

The simplicity of the system thus enacted was, however, soon departed from. In 1830 the legislature created an exception in the case of certain intoxicating liquors which it permitted

to be sold by retail for consumption on the premises without a justices' license. This change was introduced by the first of the Beerhouse Acts (11 Geo. IV., and 1 Wm. IV. c. 64). By this Act a new class of license was authorised, viz. a license for the sale by retail in specified premises of (1) beer, ale, porter, cider, and perry, and (2) of cider and perry alone. Over these licenses no jurisdiction was at this time given to the justices; any person paying the prescribed duty and having the statutory qualification was entitled to take out a beer or cider license from the Commissioners of Excise.

The evils arising from this unrestricted sale of beer resulted in the passing, in 1834, of the second Beerhouse Act (4 & 5 Wm. IV. c. 85), by which it was provided that an excise license under the first Beerhouse Act should not authorise sales by retail for consumption on the premises unless granted upon a specified certificate. This certificate was a certificate of good character, signed by six rated inhabitants of the parish, and certified, by one of the overseers. Thus a distinction was drawn in the case of these liquors between retail sales for consumption "on" and "off" the licensed premises; the provisions of the first Beerhouse Act still permitting, in the latter case, the grant of a license without the production of any certificate.

In 1835 the excise authorities were further empowered to grant retail licenses to any person to sell beer, wine, and spirits in any theatre established under a royal patent or in any theatre or place of public entertainment, without the production by such person of any justices' certificate or authority (5 & 6 Wm. IV. c. 39).

Next, by the Licensing Act, 1842 (5 & 6 Vict. c. 44), the justices in petty sessions were empowered to grant, by way of endorsement on alehouse licenses, to persons about to apply for transfers of such licenses, authority to carry on the business on the licensed premises until the holding of the next special sessions.

The distinction between "on" and "off" retail licenses, already applied to the sale of beer, was, in 1860, introduced likewise as to wines, when, under the Refreshment Houses Act (23 & 24 Vict. c. 27, §§ 3, 7, 10), the excise authorities were empowered to grant a license to shop keepers for the sale of foreign wine in bottles, to be consumed off the premises, and a license to the keepers of certain refreshment or eating houses

for the retail sale of foreign wine to be consumed on the premises.

The next changes were introduced by five statutes dealing with matters of revenue. A Revenue Act of 1861 (24 & 25 Vict. c. 21, §§ 2, 3) authorised the excise authorities to grant an additional retail spirits "off" license to any person holding a wholesale spirit dealer's license; and an "off" license for the retail sale of table beer, at a price not exceeding $1\frac{1}{2}d.$ per quart. The Revenue Act, 1862 (25 & 26 Vict. c. 22, § 13) introduced the licensed victualler's three-day occasional license. This license was intended to meet public convenience by enabling a licensed victualler to exercise his trade for a limited time at some place to which his original license did not apply. The granting of this occasional license was also vested in the Commissioners of Excise; who were, however, only empowered to grant this license upon the written consent of two justices (by 26 & 27 Vict. c. 33, § 20 reduced to one justice only).

By the Revenue Act, 1863 (26 & 27 Vict. c. 33), an additional retail beer license authorising sale for consumption "off" the premises was provided, and the excise authorities empowered to grant this license to persons already licensed as wholesale beer dealers. Occasional three-day refreshment house, beer, and tobacco licenses were allowed by the Revenue Act of 1864 in favour of persons holding the like ordinary licenses (27 & 28 Vict. c. 18); but for such occasional licenses the consent of one justice was made necessary.

A comprehensive change was effected by the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27). Up to the passing of this Act the justices' control over licensing (save in the cases mentioned above, where consents were required) had been confined to the cases of persons keeping or about to keep inns, alehouses, and victualling houses, *i.e.* to publicans' licenses; now, however, the grant of a certificate by the justices assembled at the general annual licensing meeting was made a condition precedent to excise licenses for the sale of beer or cider by retail, and to shop keepers and refreshment house keepers' retail wine licenses, as well as to a wholesale beer dealer's additional retail "off" license. Such certificate was required to specify whether the sale of beer, or cider, or wine by retail which it authorised was for consumption on or off the premises.

By the Licensing Act, 1872 (35 & 36 Vict. c. 94, §§ 69, 74),

a new license for the sale of sweets, and a wholesale spirit dealer's retail spirits "off" license (granted by the excise authorities under the Revenue Act, 1861) were also brought under the jurisdiction of the justices; while the right to an excise license authorising the sale of beer, wine, and spirits in theatres and other places of public entertainment was restricted, so that, although the proprietors of theatres still enjoy this right so far as it was conferred upon them by earlier statutes, a justices' license is now required to legalise the sale of liquor in all other places of public entertainment. (§ 72, *R. v. Commissioners of Inland Revenue*, 21 Q. B. D. 569).

Thus Parliament, although it has not restored the simplicity of the system enacted by the Alehouse Act of 1828, has gradually brought nearly all the various retail licenses, which in their origin may be said to have constituted departures from the policy of that Act, back under the control of the justices. The discretion, however, which justices have to refuse applications for "off" licenses and certificates is limited, except in the case of beer.

It will be noticed that the justices' authority is sometimes called a license and sometimes a certificate. Under the Alehouse Act, 1828, dealing with public-houses proper, it is a license; under the Wine and Beerhouse Acts it is a certificate. The foregoing outline of the existing legislation indicates how the term certificate has been introduced. But it would no doubt be more convenient if one term only were adopted to describe the authority which is now required to be obtained from the justices by persons desiring to retail intoxicating liquors.

THE LAW OF LICENSING.

PART I.

INTOXICATING LIQUOR LICENSES. JURISDICTION OF THE JUSTICES OF THE PEACE.

SECTION I.

JUSTICES' RETAIL LICENSES AND CERTIFICATES.

EXCEPT in the cases hereafter mentioned no person may lawfully sell intoxicating liquor by retail whether for consumption on or off the premises who is not licensed in that behalf by the justices of the peace and by the excise authorities.

The words "intoxicating liquor" include spirits, wine, beer,¹ porter, cider, perry and sweets, and any fermented distilled or spirituous liquor which cannot according to any law for the time being in force, be legally sold without a license from the Commissioners of Inland Revenue.² Selling by retail is in the case of spirits, wine and sweets, any sale in a quantity less than two gallons, or one dozen reputed quart bottles; in the case of beer, porter, cider

¹ "Beer" includes any liquor sold as a description of beer, which contains more than 2 per cent. of proof spirit: 48 & 49 Vict. c. 51, § 4. See *Howorth v. Minns*, 51 J. P. 7; 56 L. T. 316.

² L. A. 1872, § 74.

and perry, any sale in a quantity less than four and a half gallons.¹

The excepted cases in which a sale of intoxicating liquor is lawful without the sanction of a justices' license or certificate are:—(1) sales under occasional excise licenses;² (2) sales by proprietors of theatres in pursuance of the Acts in that behalf;³ (3) sales in packet boats to passengers therein;⁴ (4) sales of spruce or black beer;⁵ (5) sales of wine by persons licensed in right of their ancient privileges by the University authorities at Oxford and Cambridge, and by the Mayor and Burgesses of St. Albans;⁶ (6) the like sales by freemen of the Company of Vintners;⁶ and (7) sales of medicated spirits.⁵

In the case of sales for consumption off the premises there are two further exceptions to the general rule, viz.:—(1) where a wine merchant sells wine by retail for consumption off his premises in pursuance of a wine-dealer's excise license; and (2) where a wholesale spirit-dealer, whose premises are exclusively used for the sale of intoxicating liquor, retails liqueurs or spirits under an additional excise license.⁷

In all cases where the sanction of the justices is required, that sanction, whether given in the form of a license or certificate, is a condition precedent to the grant of an excise license.⁸ Such sanction is only necessary in the case of sales by retail, the justices having no jurisdiction over the licensing of wholesale dealers.⁹

Threefold Jurisdiction of Justices.—The present licensing jurisdiction of justices of the peace is founded upon the

¹ There is no definition of the word "retail" in the Alehouse Act, 1828: see L. A. 1872, § 74; 43 & 44 Vict. c. 24, §§ 102, 104; 23 Vict. c. 27, § 4; 26 & 27 Vict. c. 33, § 18; 4 & 5 Wm. IV. c. 85, § 19. As to sweets see also 11 & 12 Vict. c. 121, § 9, and 23 & 24 Vict. c. 113, § 7.

² 25 & 26 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, § 19; 27 & 28 Vict. c. 18, § 5; L. A. 1872, § 72.

³ 5 & 6 Wm. IV. c. 39, § 7. L. A. 1872, § 72.

⁴ 9 Geo. IV. c. 47; L. A. 1872, § 72.

⁵ L. A. 1872, § 72.

⁶ 9 Geo. IV. c. 61, § 36; 23 Vict. c. 27, § 45; 32 & 33 Vict. c. 27, § 20; L. A. 1872, § 72. As to these exceptions, see *post*, p. 70, Section XII.

⁷ L. A. 1872, § 73. ⁸ 9 Geo. IV. c. 61, § 17; 32 & 33 Vict. c. 27, §§ 4, 5.

⁹ L. A. 1872, § 72.

Alehouse Act, 1828, which provided for the licensing of inns, alehouses, and victualling houses.¹ By subsequent legislation the provisions of that Act and the supplemental Act of 1842,² as amended by later statutes, apply likewise to justices' beer and wine certificates.³ The jurisdiction thus conferred upon justices of the peace is of a threefold character: (1) a jurisdiction to renew existing licenses and certificates, to grant new licenses and certificates, to grant such provisionally, and to make removal orders—this jurisdiction can only be exercised by the licensing justices assembled at the general annual licensing meeting; (2) a jurisdiction to grant licenses and certificates by way of transfer at special licensing sessions; (3) a jurisdiction at petty sessions to grant temporary authorities and licenses for the protection of retailers in certain contingencies, and during certain limited periods, and to license sales in canteens.

The retail licenses and certificates which justices may grant in pursuance of their licensing jurisdiction at the general annual licensing meeting are as follows:—

1. Alehouse or publicans' licenses authorising the sale of all intoxicating liquors.⁴

2. Certificates for the sale of beer, ale, porter, cider, and perry, to be consumed on or off the premises.⁵

3. Certificates for the sale of the like liquors to be consumed off the premises.⁶

4. Certificates for the sale of cider and perry only, to be consumed on or off the premises.⁵

5. Certificates for the sale of the like liquors for consumption off the premises.⁶

6. Certificates to refreshment house keepers for the sale of wine (including sweets) to be consumed on or off the premises.⁷

¹ 9 Geo. IV. c. 61.

² 5 & 6 Vict. c. 44; called in the Short Titles Act, 1896 (59 & 60 Vict. c. 14), "The Licensing Act, 1842."

³ 32 & 33 Vict. c. 27, § 8.

⁴ 9 Geo. IV. c. 61, §§ 1, 37.

⁵ 11 Geo. IV. & 1 Wm. IV. c. 64, §§ 2, 30, 32; 32 & 33 Vict. c. 27, §§ 2, 4.

⁶ 4 & 5 Wm. IV. c. 85, § 1; 32 & 33 Vict. c. 27, §§ 2, 4, 6.

⁷ 23 & 24 Vict. c. 27, § 7; 26 & 27 Vict. c. 33, § 18; 32 & 33 Vict. c. 27, § 4; 43 & 44 Vict. c. 20, § 40.

7. Certificates to shopkeepers and wine-dealers for the sale of wine (including sweets) for consumption off the premises.¹

8. Certificates for the sale of table beer at not more than 1½d. per quart for consumption off the premises.²

9. Certificates to licensed beer dealers for the sale of beer by retail to be consumed off the premises.³

10. Certificates for the retail sale of sweets.⁴

11. Off licenses to wholesale spirit dealers to retail British and foreign spirits and liqueurs upon premises not exclusively used for the sale of intoxicating liquors, or which communicate with other premises in which some other trade is carried on.⁵

Area of Jurisdiction.—The licensing jurisdiction of the justices extends to all parts of England and Wales;⁶ and to every pier, quay, jetty, mole or work extending from any place within the jurisdiction of any licensing justices into or over any part of the sea or any part of a river within the ebb and flow of the tide;⁷ and where any river or water runs between or forms the boundary of two or more licensing districts, such river or water shall be deemed to be wholly within each such licensing district.⁸

¹ 23 & 24 Vict. c. 27, § 3; 32 & 33 Vict. c. 27, § 4; 38 & 39 Vict. c. 23, § 9; 43 & 44 Vict. c. 20, § 40.

² 24 & 25 Vict. c. 21, § 3; 32 & 33 Vict. c. 27, § 4.

³ 26 & 27 Vict. c. 33, § 1; 32 & 33 Vict. c. 27, § 4.

⁴ L. A. 1872, § 74.

⁵ 11 & 12 Vict. c. 121, § 9; 24 & 25 Vict. c. 21, § 2; L. A. 1872, §§ 68, 69.

⁶ In *Wright v. Harris*, 49 J. P. 628, a barren rock in the Bristol Channel, more than two miles from the coast of Somerset, was held to be, for licensing purposes, a part of that county.

⁷ Cf. *Embleton v. Brown*, 30 L. J. M. C. 1; 3 E. & B. 234.

⁸ L. A. 1872, § 61. As to what is a licensing district, see *post*, p. 5.

SECTION II.

THE GENERAL ANNUAL LICENSING MEETING.

Meeting, where and when held.—As the authority empowered to grant new, and renew existing, licenses and certificates for the retail sale of intoxicating liquors, the justices of the peace are required to hold annually,¹ in every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county not being within such division, and in every liberty, division of every liberty, county of a city, county of a town, city and town corporate² in England, a special session, known as the general annual licensing meeting. Each district for which such meeting is held is a separate licensing district.³ In the counties of Middlesex and Surrey this meeting must be held within the first ten days of the month of March, elsewhere between the 20th day of August and the 14th day of September inclusive.⁴

The day, hour, and place for holding this meeting are fixed by the justices at a petty session held at least twenty days previous. The fixture is made by a majority of the justices present at such petty session by a precept under their hands.⁵

¹ 9 Geo. IV. c. 61, § 1.

² The words "town corporate," "county and place," or "division and place," include every borough having a separate commission of the peace; 45 & 46 Vict. c. 50, § 246.

³ L. A. 1872, § 74.

⁴ 9 Geo. IV. c. 61 did not alter the time of granting licenses for the city of London, which is still the second Monday in March. See § 36.

⁵ 9 Geo. IV. c. 61, § 2.

Notice of Meeting—to whom given.—Notice of the fixture so made must be given (1) to the public at large; (2) to the justices acting for the licensing district; (3) to all persons within such district who keep, or have given notice of their intention to apply for the justices' license or certificate to keep, a house licensed for the retail sale of intoxicating liquor to be drunk or consumed on the premises.¹

In all petty sessional divisions beyond the metropolitan police district or the city of London these notices are issued by the clerk to the justices,² who is required, within five days after receiving the precept of the justices, to send the notice and copies thereof to the petty constables or other peace officers of each district within the licensing district, so that the notice may be affixed to the door of the church or chapel,³ or if there be none, in some convenient and conspicuous place in each of such districts, and the copies thereof served by the respective constables upon the persons in their respective districts who are entitled to receive them as license holders or as intending applicants. These notices may be sent by the clerk, to the constables, by post.⁴ The notices to the justices of the licensing district are sufficiently served if sent to them direct by post by the clerk to the justices, within a reasonable time: each notice being signed by one justice.⁵

In the case of petty sessional divisions lying wholly or in part within the metropolitan police district or the city of London, these notices are given by the High Constable of the division who is required to give them within five days after receiving the precept of the justices.⁶

Disqualified Justices.—Certain persons are by statute disqualified from acting as licensing justices, either at the

¹ 9 Geo. IV. c. 61, § 2.

² 32 & 33 Vict. c. 47, § 3.

³ Chapel apparently means chapel of the Established Church. See *Ormerod v. Chadwick*, 16 M. & W. 367; 1 L. J. M. C. 143 (rating case).

⁴ L. A. 1872, § 70.

⁵ See 9 Geo. IV. c. 61, § 2, as amended by 7 & 8 Vict. c. 33, § 7; 32 & 33 Vict. c. 47, § 3.

⁶ 9 Geo. IV. c. 61, § 2. The High Constables Abolition Act, 32 & 33 Vict. c. 47, does not apply to the Metropolitan police district nor to the city of London.

general annual licensing meeting or at special sessions. Thus no justice of the peace who either in the licensing district or in the district or districts adjoining that in which he usually acts, is, or is a partner or shareholder in any company which is, a common brewer, distiller, maker of malt for sale, or retailer of malt, or of any intoxicating liquor, is qualified to sit and adjudicate in such cases, or to vote on the appointment of justices' committees. Nor is any justice competent to act in respect of any premises in the profits of which he is interested, or in respect of premises of which he is wholly or in part the owner, lessee, or occupier, or in respect of premises for the owner, lessee, or occupier of which he is manager or agent.¹

Where, however, the disqualifying interest which any justice has vested in him in any premises is a legal interest only, and not a beneficial one, he may apparently act in respect of such premises.²

A justice who is disqualified and knowingly acts renders himself liable for each such offence to a penalty not exceeding £100. But this penalty (which is recoverable by action)³ cannot be enforced against an offending justice in respect of more than one offence committed by him before the institution of the proceedings to recover such penalty.⁴

At one time the adjudication of a disqualified justice was fatal to the license which he joined in granting, but now no act done by any justice disqualified as above shall by reason only of such disqualification be invalid;⁵ and in the case of licenses and certificates granted by borough justices it is expressly provided that no objection shall be taken to any such license or certificate on the ground of the disqualification of the justices granting or confirming the same.⁶

¹ L. A. 1872, § 60; *Attorney-General v. Willett*, 60 J. P. 437; 12 T. L. R. 494.

² L. A. 1872, § 60. The meaning of the proviso in this section is most obscure.

³ At the instance of the Crown. See *Bradlaugh v. Clarke*, 8 App. Ca. 354; 52 L. J. Q. B. 505; 48 L. T. 681; 47 J. P. 405; 31 W. R. 677.

⁴ L. A. 1872, § 60.

⁵ *Ibid.*

⁶ *Ibid.*, § 38.

Formerly licenses and certificates granted by justices were required to be signed by the majority of qualified justices present when they were granted, but now the assent of the justices may be signified by means of an impression from an official seal or stamp affixed in their presence and authenticated by the signature of their clerk.¹

Adjournment of the Meeting.—The justices having met on the day and at the hour and place of which notice has been given, must, after transacting the business before them, adjourn the meeting over a period of at least five whole days, to what they deem the most convenient day or days, and place or places within the licensing district, for enabling applicants for licenses to apply at the adjourned meeting. The Alehouse Act provides expressly that every such adjournment must be held, in Middlesex and Surrey, within the month of March, and elsewhere within the months of August and September.²

Notice of the adjourned meeting must be given, as in the case of the original meeting, to the justices, and to the public, but no notices of such adjourned meeting need be served on holders of licenses or certificates, or applicants for licenses or certificates not required by the licensing justices to attend at the adjournment.³

The annual meeting and the adjournment or adjournments thereof constitute in law one meeting.⁴

New Licenses and Certificates—by whom Granted.—A

¹ L. A. 1872, § 40 (3); 33 & 34 Vict. c. 29, § 4 (2).

² 9 Geo. IV. c. 61, § 3. It has been held, however, that, under § 42 of the L. A. 1872, the justices may hold an adjournment beyond the prescribed period; *R. v. Denbigh Justices*, 59 J. P. 708; *R. v. Anglesea Justices*, 65 L. J. M. C. 12; 59 J. P. 743; 15 R. 614. Cf. case of rating appeals where it was impossible for the court to hear all the appeals within the statutory time; *R. v. London Justices* [1893], 2 Q. B. 476; 57 J. P. 488. Where a mandamus is obtained in a case of improper refusal of a license, an adjournment of the annual meeting may be held outside the prescribed period for the purpose of hearing and determining the application; *R. v. Rochester*, E. B. & E. 1024; 27 L. J. Q. B. 434; *R. v. Miskin Higher Justices*, 50 J. P. 247; *R. v. Farquhar*, 9 Q. B. 258; 39 J. P. 166. Cf. *R. v. Newcastle Justices*, 51 J. P. 245; *Webber v. Birkenhead Justices*, 61 J. P. 664.

³ 9 Geo. IV. c. 61, § 5; L. A. 1874, § 26.

⁴ *R. v. Anglesea Justices*, *supra*; *R. v. Armstrong*, 65 L. J. M. C. 35; 12 T. L. R. 159.

new license or certificate is a license or certificate granted at the general annual licensing meeting in respect of premises in respect of which a similar license or certificate has not theretofore been granted.¹

In counties² the whole body of qualified justices are entitled to take part in the general annual licensing meeting, and adjudicate upon applications for new grants; and subject to confirmation by the proper authority all new licenses and certificates are granted by them.

In boroughs³ which (a fortnight before the first day upon which the general annual licensing meeting may lawfully be held) have ten acting justices or upwards, new licenses and certificates are granted (likewise subject to confirmation) by a committee, and not by the whole borough bench. This committee is appointed annually by the qualified⁴ borough justices from among their own number, under § 38 of the Licensing Act, 1872. The committee must be appointed in the fortnight preceding the commencement of the period during which the annual licensing meeting for the borough may be held, and must consist of not less than three or more than seven justices. Of this committee three members constitute a quorum. Vacancies arising in a borough licensing committee from death, resignation, or other causes, may be from time to time filled up by the justices by whom the committee is appointed. Members retiring at the end of the year are eligible for reappointment, and if from any cause members have not been appointed in any year to succeed the

¹ L. A. 1874, § 32. There is no definition of a new as distinguished from a renewed license in the Alehouse Act of 1828: an appeal lay under that Act from a refusal in both cases.

² "County" does not include a county of a city or a county of a town, but means any county, riding, parts, division or liberty of a county having a separate commission of the peace and a separate court of quarter sessions. L. A. 1872, § 74.

³ "Borough" means a county of a city, county of a town, city, municipal borough, cinque port and its liberties, town corporate or other place in which a general annual licensing meeting is held, exclusive of a petty sessional division of a county. L. A. 1872, § 74: see p. 5, *ante*, note 2.

⁴ No justice who is disqualified may act for any purpose under the Licensing Acts; except in the trial of certain offences: L. A. 1872, § 60. *Attorney General v. Willett*, 60 J. P. 437; 12 T. R. 494.

retiring members, such retiring members may continue to act till their successors are appointed.¹

In boroughs in which there are not ten acting justices at the time above-mentioned, new licenses and certificates are granted, not by a committee, but by the whole body of qualified borough justices.¹

In all matters touching the granting or withholding or transferring of licenses and certificates, the justices decide by a majority of the qualified justices present.² The votes of all the justices present should be counted, and a justice who does not vote in favour of an application must be counted as against it.³ If the justices are equally divided, and do not adjourn, the application fails.⁴

Licensing justices are not a Court,⁵ but they are bound to act judicially in considering applications for licenses. They may not attach conditions to their grants, such as the payment of a sum of money by the applicant;⁶ and if they act oppressively a criminal information will lie against them.⁷

¹ L. A. 1872, § 38.

² 9 Geo. IV. c. 61, § 9.

³ *R. v. Monmouthshire Justices*, 4 B. & C. 844; 8 B. & C. 137; *R. v. Belton*, 11 Q. B. 380; *R. v. Cox*, 48 J. P. 440; *Garton v. Southampton Justices*, 57 J. P. 328; 9 T. L. R. 430; *R. v. Rogers*, 56 J. P. 183; *R. v. Ashplant*, 52 J. P. 474.

⁴ *Garton v. Southampton Justices*, *supra*. See also *ex parte Evans*, [1894] A. C. 16.

⁵ *Boulter v. Kent Justices*, [1897] A. C. 556; 66 L. J. Q. B. 787; 61 J. P. 532; 46 W. R. 114.

⁶ *R. v. Athay*, 2 Burr. 653; *R. v. Bowman*, 14 T. L. R. 303; W. N. (98) 29 (8).

⁷ *R. v. Davies*, 3 Burr. 1317; *R. v. Harries*, 13 East. 270. See also *R. v. Young*, 1 Burr. 557.

SECTION III.

NEW LICENSES AND CERTIFICATES.

Notices by Applicant.—Any person intending to apply to the general annual licensing meeting for a license or certificate must comply with the statutory provisions governing such applications, as otherwise the justices will have no jurisdiction to hear him.¹ In the case of an application for a new license or certificate² he must give notice in writing, twenty-one days at least before applying, of his intention to do so. This provision as to the period of notice to be given, is imperative, and must be strictly complied with by the applicant.³ The notice must be given (1) to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is situate; and (2) to the superintendent of police⁴ of the district. These notices, which may be served personally or by post,⁵ must set forth the applicant's name and address, a description of the license or licenses for which he intends to apply, and

¹ *Ormerod v. Chadwick*, 2 N. Sess. 697; 16 M. & W. 367. *Ex parte James*, 12 J. P. 262. *R. v. Riley*, 53 J. P. 452. *R. v. Blackburn*, 42 J. P. 775; 43 J. P. 111; 39 L. T. (N.S.) 444.

² See L. A. 1872, § 40; 32 & 33 Vict. c. 27, § 7; 33 & 34 Vict. c. 29, § 4.

³ See *R. v. Shropshire Justices*, 8 A. & E. 173; *Young v. Higgin*, 6 M. & W. 49; *Norton v. Salisbury*, 4 C. B. 42; 16 L. J. M. C. 9.

⁴ Or whoever is at the head of the police in the district. See *R. v. Birley*, 55 J. P. 88.

⁵ L. A. 1872, § 70. A notice served by post is deemed to have been served at the time when the letter containing it would have been delivered in the ordinary course of post. It is sufficient to prove that the letter was prepaid, properly addressed, and posted.

a description of the situation of the house or shop in respect of which the application is to be made.

Further, within the space of twenty-eight days before his application, the applicant must have caused a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays, (1) on the door of the house or shop in respect of which a license is sought, and (2) on the principal door or one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or, if there be no such church or chapel, on some other public and conspicuous place within such parish or place. Finally he must also advertise the above notice in some paper circulating in the place in which the premises in question are situate, on some day not more than four and not less than two weeks before his intended application, and on such day or days (if any) as may be from time to time fixed by the licensing justices.¹

Where the notice is not served personally upon the superintendent of police, care should be taken to leave it at, or send it to, his house or usual place of business. Thus, where the superintendent's house and place of business were both outside the division in which the applicant lived, and the applicant left the notice for the superintendent with an inspector at a police station within the division, which the superintendent occasionally visited, and in consequence it was received a day late, the Court held that the notice was bad.²

The object of requiring a description in the notice of the situation of the house is to enable persons interested to find out the house. Any description which satisfies this object is sufficient. Where a notice described the house for which a license was sought as "a house or shop situate at the market-place in C.," and it was shown that the market-place in C. consisted of seventeen houses not

¹ No particular form of notice is prescribed by the Licensing Acts; any notice giving the required particulars is sufficient. See *R. v. Blackburn Justices*, 42 J. P. 775; 39 L. T. (N.S.) 444.

² *R. v. Riley*, 53 J. P. 452; *R. v. Birley*, 55 J. P. 87.

numbered, the High Court nevertheless held the description sufficient.¹

As the application may be made either at the general annual licensing meeting or at the adjournment, the time from which the notices run is either the general meeting or the adjournment, according as the application is made, either at the one or the other. Thus an application which would be out of time for the general meeting may yet be in time for the adjournment.²

Although the applicant has his choice of going either to the general meeting or to the adjournment, he cannot, if he fail before the one, give fresh notices and apply a second time on the same materials to the other.³ If, however, he is able to base such second application upon new grounds not before the general meeting on the first occasion, he may be heard again at the adjournment. Thus, where an application was refused by the general meeting because all the conditions as to notices had not been complied with, and the applicant, having meanwhile satisfied those conditions, came again to the justices at the adjourned meeting, Lord Coleridge, C.J., and Stephen, J., held that the justices should have heard this second application on the merits, and not treated it as already *res judicata*.⁴ Again, if in the meantime the applicant who has been refused renewal vacates the premises, a new tenant is not prevented by that refusal from applying in his own name to the adjournment of the general annual meeting for a renewal.⁵

In computing the twenty-one days of notice, the day upon which the notice is given and the day of the general annual meeting or of the adjournment (as the case may be) should both be excluded.⁶

¹ *R. v. Penkridge Justices*, 56 J. P. 88; 61 L. T. M. C. 132; 66 L. T. 371.

² *R. v. West Riding Justices*, L. R. 5 Q. B. 33; 29 L. J. M. C. 17; 10 B. & S. 840; 34 J. P. 4; *R. v. Pownall*, [1893] 2 Q. B. 158; 62 L. J. M. C. 174; 57 J. P. 424; 70 L. T. 138; 5 R. 486.

³ *Ex parte Rushworth*, 34 J. P. 676; 23 L. T. 120.

⁴ *R. v. Caulfield*, 46 J. P. 756. See also *Ex parte Maugham*, 1 Q. B. D. 49.

⁵ *R. v. Thomas*, [1892] 1 Q. B. 426; 61 L. J. M. C. 141; 56 J. P. 151; 66 L. T. 289; 40 W. R. 472.

⁶ *R. v. Shropshire Justices*, 8 A. & E. 173; *Young v. Higgin*, 6 M. & W. 49; *Norton v. Salisbury*, 4 C. B. 32; 16 L. J. M. C. 9. See also *Mercantile Investment Company v. International Company*, [1893] 1 Ch. 489 n.

A notice given for the beginning of the general annual meeting entitles the applicant to be heard at an adjournment of such meeting.¹

Attendance of Applicant.—Where the application is for a new license or certificate, the person applying should attend personally at the general annual licensing meeting, but if he is prevented from attending “by sickness or infirmity or any other reasonable cause” the justices may deliver the license or certificate to any other person there present who is duly authorised by the applicant to attend and receive it on his behalf. Before, however, the justices can dispense with the applicant’s attendance they must be satisfied that his absence is occasioned by some good and sufficient cause, and for this purpose they may require evidence to be given upon oath.²

The applicant must be prepared to tender evidence as to his good character, which will not be assumed in his favour; and for this purpose witnesses should be called, and not written characters merely put in.³

Every person applying for a new license or certificate must state the name of the owner of the premises in respect of which a license is sought, and the justices are required to endorse the name of such owner on the license or certificate when granted.⁴ “Owner,” as defined by the Licensing Act, 1872, means the person for the time being entitled to receive, either on his own account or as mortgagee, or other incumbrancer in possession, the rack rent of the premises;⁵ as defined by the Licensing Act, 1874, “any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier.”⁶

Opposition to New Grant.—On an application for a new license or certificate any one may appear before the general annual licensing meeting and oppose the grant. In *Price*

¹ *R. v. Armstrong*, 65 L. J. M. C. 35; 12 T. L. R. 159.

² 9 Geo. IV., c. 61, § 12; 33 & 34 Vict. c. 29 § 4.

³ *R. v. Pilgrim*, L. R. 6 Q. B. 96; 40 L. J. M. C. 3; 35 J. P. 167; 23 L. T. 410; 19 W. R. 99. See *post*, limitations on discretion of justices (Section VIII.), p. 44.

⁴ L. A. 1872, § 36.

⁵ See § 74.

⁶ § 29.

v. *James*, Lord Esher, M.R., said, "It has always been the rule under the Licensing Acts for the magistrates to allow any person interested in the welfare of the neighbourhood to appear as an objector to the granting of a license to the person applying for one. The superintendent of police is generally the objector in such cases."¹ Nor is it necessary (in the case of a new grant) that any notice should be given to the applicant of the intended opposition, the only restriction in such case being that no person can be heard as an opponent before the confirming authority who did not oppose the grant before the licensing justices.²

On applications for new licenses or certificates the justices are not confined to the consideration of evidence given upon oath, there being no statutory provision in such case requiring them to receive such evidence only.

Grounds of Opposition—Discretion of Justices.—The justices have an absolute discretion to grant or refuse all applications for new licenses or certificates for the sale by retail of intoxicating liquors *to be consumed on the premises*. They have also a like discretion in the case of all *beer* certificates for consumption *off the premises*.³ No person has, either by statute or at common law, any right to demand a new grant. Nor is there any provision in any Act compelling the justices to make such a grant in any given state of things. In all cases they may therefore consider, not merely the merits of the applicant, but likewise the general merits of the application. In doing so they ought to govern their discretion by reference, not only to the qualifications of the person applying and the suitability of the house, but also by such other considerations as the nature of the locality, the population, the number of houses already licensed, and all other circumstances bearing on the question, whether it is fit and proper, in the interests of the public, that an additional license should be granted.⁴

But it is the duty of the justices to exercise this

¹ [1892] 2 Q. B. 434-5.

² L. A. 1872, § 43.

³ 45 & 46 Vict. c. 34, § 1.

⁴ Per Lush, J., in *H. v. Lancashire Justices*, L. R. 6 Q. B. 97, p. 99; 40 L. J. M. C. 17; 35 J. P. 170; 23 L. T. 461; 19 W. R. 204.

discretion judicially, and not to proceed upon grounds merely frivolous or capricious. In *Sharp v. Wakefield*, Lord Halsbury, L.C.,¹ thus defined the judicial discretion of the justices: "An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and discretion means, when it is said that something is to be done within the discretion of the authorities, that that something is to be done according to the rules of reason and justice, not to private opinion, according to law and not to humour. It is to be not arbitrary, vague, and fanciful, but legal and regular, and it must be exercised within the limit to which an honest man, competent to the discharge of his office, ought to confine himself."

A different rule prevails as to new off certificates for the retail sale of cider,² and of wine,² and new off licenses for the retail sale of liqueurs or spirits,³ and of sweets.⁴ In these last cases the discretion to refuse the application is limited to one of the four grounds hereafter specified.⁵

Every justices' license and certificate is required to be granted in the form prescribed from time to time by a Secretary of State.⁶ The forms now in force will be found in the appendix. Licenses and certificates granted at the general annual licensing meeting remain in force for one year—from the 5th of April in Middlesex and Surrey, and the 10th of October elsewhere.⁷

Confirmation of Licenses and Certificates.—No new license or certificate for the retail sale of intoxicating liquors to be consumed on the premises, whether granted by county or borough licensing justices, is now valid until it has been confirmed by the proper authority.⁸

In counties, the confirming authority is the *county*

¹ L. R. [1891] A. C. 179; 60 L. J. Q. B. 209; 55 J. P. 212; 64 L. T. 180; 39 W. R. 561.

² 32 & 33 Vict. c. 27, § 8.

³ L. A. 1872, § 69.

⁴ Ibid., § 74.

⁵ As to these grounds, see *post*, p. 43, Section VIII.

⁶ L. A. 1872, § 48. Where the justices added to the authorised form of license a detailed description of the licensed premises, the Court refused to strike out such words, but stated that they did not alter the effect of the license. *Stringer v. Huddersfield Justices*, 40 J. P. 22; 33 L. T. (N.S.) 568.

⁷ 9 Geo. IV. c. 61, § 13.

⁸ L. A. 1872, §§ 37, 38.

licensing committee—a committee appointed annually from amongst the county justices by the justices assembled in Quarter Sessions.¹ If the justices think proper, they may appoint more than one such committee, and assign to each the area of its jurisdiction. A county licensing committee must consist of not less than three or more than twelve members. It continues in office for a year. A quorum is three. Vacancies arising during the year may be filled up from time to time by the justices in Quarter Sessions by whom the committee was appointed. Retiring members may be reappointed, and when from any cause fresh annual appointments have not been made, retiring members may continue to act until their successors are appointed. Regulations with respect to the meetings of the county licensing committee, and the transaction of its business as confirming authority, and the costs of proceedings before it, are required to be made by the justices in Quarter Sessions.² The clerk of the peace of the county, by himself or his deputy, is the clerk of the county licensing committee.¹

In boroughs having a licensing committee (*i.e.* in boroughs having ten acting justices or upwards), the confirming authority is the whole body of qualified *borough justices*, who are empowered to make their own rules as to proceedings and costs on confirmations; and all new licenses and certificates granted by the licensing committee, which authorise consumption on the premises, must be confirmed by a majority of such justices at a meeting assembled for the purpose of confirming licenses.³

In boroughs having less than ten acting justices the confirming authority is a *joint committee* of borough and county justices, consisting of six members; three qualified justices of the county in which the borough is situate, appointed by the county licensing committee, and three justices of the borough appointed by the borough bench.⁴ If there are not three qualified borough justices, the deficiency in the numbers of the joint committee, so caused,

¹ L. A. 1872, § 37.² *Ibid.*, § 43.³ *Ibid.*, §§ 38, 43.⁴ *Ibid.*, § 38.

may be supplied by county justices appointed by the county licensing committee; casual vacancies on the joint committee may be filled up from time to time by the justices by whom the person creating the vacancy was appointed. The quorum of a joint committee is five. The senior magistrate present acts as chairman, and in the event of an equal division the chairman of such committee has a second vote.¹ The joint committee makes its own rules as to procedure on confirmations and costs incurred therein.²

The confirming authorities have the same discretion as to granting or refusing a licence or certificate as the licensing justices. They are not courts of appeal; they only re-hear the application, and exercise their own judgment in the matter. They are not restricted to the same evidence as was tendered before the licensing justices, but may hear further evidence. Nor are they bound to give any reasons for their decision.³

No appeal lies by an applicant for a new license or certificate from the decision of the licensing justices in the general annual licensing meeting, or from that of the confirming authority, where either of these bodies decides adversely to the applicant. Where the licensing justices at the general annual meeting grant to an applicant a new license or certificate, no person can be heard in opposition to the grant so made, before the confirming authority who has not appeared and opposed the grant before the justices.⁴ The confirming authorities may award such costs as they shall deem just to the successful party in the proceedings before them.⁵

¹ L. A. 1872, § 38, which further provides "From and after the passing of this Act, the justices of a county shall not for licensing purposes, save in so far as respects the power of appointing members of a joint committee, have any jurisdiction in a borough in which the borough justices have for such purposes concurrent jurisdiction." See also L. A. 1874, § 21.

² L. A. 1874, § 25.

³ *Re Annandale*, 37 J. P. 85; *R. v. Middlesex Justices*, 42 J. P. 469; *R. v. Pownall*, [1893] 2 Q. B. 158; 62 L. J. M. C. 174; 57 J. P. 424; 70 L. T. 138.

⁴ L. A. 1872, § 43.

⁵ *Ibid.* These costs are to be recovered by civil debt procedure; see L. A. 1872, § 51; also 11 & 12 Vict. c. 43, §§ 18, 26, as amended by 42 & 43 Vict. c. 49, § 47; *Ex parte Boaler*, [1893] 2 Q. B. 146; 63 L. J. M. C. 29; 57 J. P. 633; 9 T. L. R. 508.

New certificates authorising the grantees to take out excise licenses for the sale by retail of intoxicating liquors not to be consumed on the premises (known as "off" licenses) do not require any confirmation.¹

Renewals of existing licenses and certificates are granted by the general body of qualified licensing justices at the general annual meeting. No confirmation of these grants is required. Where the licensing justices refuse a renewal, the applicant may appeal to Quarter Sessions against such decision. But no appeal lies by an opponent where the licensing justices have granted a renewal, such determination in favour of the applicant being final.²

Beyond the limits of the jurisdiction of the metropolitan police courts, a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licenses and certificates so far as regards any licensing district wholly or partly within his jurisdiction.³

¹ L. A. 1874, § 24.

² As to renewals see next section; as to appeals see Section IX., *post*, p. 53.

³ L. A. 1872, § 39.

SECTION IV.

RENEWALS OF LICENSES AND CERTIFICATES.

A LICENSE or certificate by way of renewal may be defined as a license or certificate granted at a general annual licensing meeting in respect of premises similarly licensed at the date of such grant.¹

The jurisdiction to renew existing licenses and certificates is vested alike, in the case of counties and boroughs, in the whole body of qualified justices, assembled at the general annual licensing meeting, the special provisions as to the appointment of committees, noticed under the subject of new licenses, having no application to renewals.

A current license or certificate may be renewed to the person holding the same, or to a new tenant in occupation of the premises at the date of the general annual licensing meeting.²

¹ L. A. 1872, § 74, cf. definition of new license. It is respectfully submitted that *R. v. Market Bosworth Justices*, 56 L. J. M. C. 96; 51 J. P. 438; 57 L. T. 56; 35 W. R. 734; in deciding that a renewal of a license can be obtained after the expiration of the former license, is founded upon a misapprehension of what the Court of Appeal decided in *R. v. Liverpool Justices*, 11 Q. B. D. 638; 52 L. J. M. C. 114; 47 J. P. 596; 49 L. T. 244; 32 W. R. 20; since it is only by an application to special sessions that a license other than a new license can be obtained after the expiration of the previous license. Further, such license, when so granted, is a license by way of transfer, and not a renewal. Cf. *Ex parte Tarbath*, 31 L. T. 513.

² 9 Geo. IV., c. 61, § 1; 32 & 33 Vict. c. 27, § 8. See *R. v. Liverpool Justices*, *supra*; *Symons v. Wedmore*, [1894] 1 Q. B. 401; 63 L. J. M. C. 44; 69 L. T. 801; 58 J. P. 197; 42 W. R. 301. Except in the case of beerhouse certificates, which can only be granted to the resident holder and occupier of the premises, it would seem that there is nothing to prevent justices granting a renewal to an incoming tenant not already in occupation of the premises, if he is about to keep the house. A license cannot be renewed in the name

Renewals to Licensed Persons.—These renewals are now governed by § 42 of the Licensing Act, 1872, which applies to all cases where the holder of a license or certificate applies for a renewal of the license or certificate so held by him.¹ No notice of the application is required. The law assumes that an application will be made to the general annual meeting for the renewal of every license and certificate, and the fact that a license or certificate is current is in itself sufficient notice to the public that a renewal will be asked for.

Nor is it necessary that a licensed person applying for renewal should attend in person, except where he is expressly required to do so by the justices for some special cause personal to himself.² Such special cause must be a cause having reference to his particular case. Therefore the magistrates cannot make a general rule that they will require the attendance of all license holders applying for renewals; each case must be dealt with on its own merits. Commenting on this, in *Sharp v. Wakefield*,³ Lord Hannen said: "Instances have been brought before the Superior Courts where justices have expressed and acted upon a general intention with regard to all licenses, whereas it is their duty to consider each individual case on its own special merits. The object of the 26th section of the Act of 1874 appears to be to enforce this duty, and to require the justices to particularise the special ground on which they consider the personal attendance of the applicant necessary. The word 'personal' is fully satisfied by construing it as meaning 'for a cause in which the applicant is personally interested, and not merely interested as one of the general body of licensed persons.'" Although the personal attendance of the license holder is dispensed with

of a dead person. *Cowles v. Gale*, L. R. 7 Ch. 12; 41 L. T. Ch. 14; 25 L. T. 524; 20 W. R. 70.

¹ The holder of a temporary authority under 5 & 6 Vict. c. 44, is not a licensed person. *Price v. James*, [1892] 2 Q. B. 428; 61 L. J. M. C. 203; 56 J. P. 471; 57 J. P. 148; 67 L. T. 543; 41 W. R. 57.

² L. A. 1872, § 42; L. A. 1874, § 26.

³ [1891] A. C. 189; 60 L. J. M. C. 8; 55 J. P. 197; 64 L. T. 180; 39 W. R. 630.

unless the justices require it, as above, it is necessary that some one should attend the licensing meeting on his behalf, to receive the renewed license or certificate.¹

Opposition to Renewal to a Licensed Person : Notice.—

In the case of a new grant, as above stated, an opponent does not require to give any notice of his intended opposition; but a different rule prevails as to renewals of current licenses and certificates where the licensed person himself applies for such renewal. In such case the objector must have served notice of his intended opposition upon the license holder not less than seven days before the commencement of the general annual licensing meeting.² This notice must be in writing, and is not valid unless it states in general terms the grounds on which the renewal is opposed.³ It is not necessary that this notice should have been served upon the license holder personally, provided it can be shewn to have reached him seven days before the general annual meeting. Thus a notice left with a boy upon the licensed premises, which in fact came to the hands of the license holder in time, was held to be sufficient.⁴ Where the premises in question are in a district dealt with by the magistrates at the adjournment, seven days' notice before such adjournment is sufficient.⁵ If notice of opposition has not been served seven days before the meeting, and the justices refuse the application without adjourning, the defect in the notice cannot be cured by giving a further notice before Quarter Sessions.⁶ Where no notice of opposition has been given the renewal of a license may still be objected to at the annual meeting, in open court; and where this occurs the magistrates may adjourn the granting of the license to some future day, and require the attendance of the holder of the license on such

¹ *R. v. Newcastle Justices*, 51 J. P. 244. See also *Garrett v. Marylebone Justices*, 12 Q. B. D. 620, per Lord Coleridge, C.J., at p. 628.

² L. A. 1872, § 42.

³ *Ibid.* 1874, § 26.

⁴ *Ex parte Portingell*, [1892] 1 Q. B. 15; 61 L. J. M. C. 1; 56 J. P. 276; 65 L. T. 603; 40 W. R. 102.

⁵ *R. v. Angelsea Justices*, [1892] 1 Q. B. 850; 61 L. J. M. C. 149; 56 J. P. 440.

⁶ *Hockings v. Powell*, 55 J. P. 358.

day, so that the objection may be heard as if the prescribed notice had been given.¹ In such case the justices' clerk must give the license holder notice that his attendance is required at the adjourned hearing.² It would seem that he ought also to be informed of the grounds of opposition to his application, and that, failing his being supplied with such information, he might be entitled to a further adjournment. But the Acts do not expressly require such notice to be given. Nor need an objector state in open court the grounds of his objection; in fact it is not necessary that any grounds should be stated, in order to entitle the justices to adjourn.³ The notice requiring the attendance of the applicant must be served in the name of the justices. If served by some third person and not in the name of the justices, the licensee may treat the notice as a nullity.⁴

The justices cannot adjourn an application upon an objection taken at the general annual meeting, unless such objection is made in open court. It may be made by the justices themselves. But it must be publicly made. Therefore an objection made to the justices privately out of court, is not one upon which they can adjourn the hearing of an application for a renewal.⁵

At the same time it has been held that the justices may themselves adjourn an application without any objection being made by any one, if they consider it desirable not to decide at once as to the granting of the license.⁶

Where no written notice of opposition has been given within the prescribed time, and no objection is taken in open court, at the general annual licensing meeting, to the renewal to a licensed person of his license or certificate, the justices, if they do not adjourn, are, it would seem,

¹ L. A. 1872, § 42.

² Ibid.

³ *Daykin v. Parker*, [1894] 2 Q. B. 273, 556; 58 J. P. 835; 63 L. J. M. C. 246; 71 L. T. 379; 42 W. R. 625.

⁴ *Whiffen v. Malling*, [1894] 1 Q. B. 362; 56 J. P. 325; 61 L. J. M. C. 82; 66 L. T. 333; 40 W. R. 292.

⁵ *R. v. Merthyr Tydvil Justices*, 14 Q. B. D. 584; 54 L. J. M. C. 78; 49 J. P. 213. *R. v. Redditch Justices*, 50 J. P. 246.

⁶ *R. v. Anglesea Justices*, 59 J. P. 743; 65 L. J. M. C. 12; 12 L. T. R. 4.

bound to grant such renewal as a matter of course.¹ For the onus of proof in these cases is upon the opposer, and where there is no opposition the applicant is entitled to his grant without tendering any evidence in support of his application.²

The justices may not receive any evidence with respect to the renewal of a license or certificate where the holder is the applicant, which is not given on oath.³

Renewals to Unlicensed Persons.—Where a change of tenancy has taken place during the currency of a license or certificate, the occupier of the premises (although he has not obtained a transfer license) may apply for a renewal to the general annual meeting.⁴ Such applicant not being a licensed person, the provisions of § 42 of the Licensing Act, 1872, do not apply. In this case, also, no notice of the application is required; the Alehouse Act, 1828,⁵ not requiring such notice, and the Wine and Beerhouse Act, 1869,⁶ expressly providing that notice of renewal applications for certificates shall not be necessary. But such an applicant is not entitled to notice of opposition, and the justices are free in his case from the limitations imposed by § 42 of the Licensing Act as to the objections they may entertain.⁷

An applicant for a renewal, who is not a licensed person, must attend personally at the general annual meeting, unless the justices excuse his attendance for sickness, infirmity, or other reasonable cause.⁸

¹ Per Lord Coleridge, C.J., in *R. v. Merthyr Tydvil Justices*, *supra*.

² As to Quarter Sessions, see *Hockings v. Powell*, 55 J. P. 358.

³ L. A. 1872, § 42. But where an applicant admitted that he had been convicted of selling drink to a drunken person, and the justices acted on this admission without evidence on oath being given to prove the conviction, held they might properly do so. *R. v. Kent Justices*, 41 J. P. 263.

⁴ *R. v. Liverpool Justices*, 11 Q. B. D. 638; 52 L. J. M. C. 114; 47 J. P. 596; 49 L. T. 244; 32 W. R. 20; *Symons v. Wedmore*, [1894] 1 Q. B. 401; 63 L. J. M. C. 44; 58 J. P. 197; 69 L. T. 801; 42 W. R. 301; *R. v. Market Bosworth Justices*, 56 L. J. M. C. 96; 51 J. P. 438; 57 L. T. (N.S.) 56. But see note as to this case, *supra*. Where a new tenant has not been found at the date of the meeting, the landlord cannot apply for a renewal to himself merely to enable him to look out for a tenant. *R. v. Holmes*, 45 J. P. 372.

⁵ 9 Geo. IV., c. 61.

⁶ 32 & 33 Vict. c. 27, § 7.

⁷ L. A. 1872, § 42, *i.e.* objections of which notice has been given.

⁸ 9 Geo. IV. c. 61, § 12.

It would also appear that in such case the justices are not confined to evidence given upon oath, though why there should in this respect be any difference between renewals to license holders and to unlicensed persons it is difficult to see.

The applicant should be prepared to tender evidence of his good character, as in the case of a new grant.

Form of Renewal.—The renewal of a license or certificate may be granted by an endorsement on the license or certificate, or by the issue of a copy of the old license or certificate; but in the latter case there must be endorsed on such copy all convictions made within the previous five years which are endorsed on the old license or certificate.¹

Justices' Discretion as to Renewals.—Where objection has been properly taken, the justices at the general annual meeting have (except as to a privileged beer-house) all the discretion to grant or refuse a renewal that they would have in the case of a new grant.² In practice, however, they will no doubt exercise that discretion somewhat differently in dealing with renewal applications, for the legislature has most clearly shewn that it supposed that licenses would usually be renewed, and that the taking away of a man's livelihood would not be practised cruelly or wantonly.³ The justices may therefore properly remember that a year before a license was granted, and presumably (unless some change during the year is proved) they will start with the fact that the topics which ordinarily affect a license, such as the needs of the neighbourhood and the like, have already been considered, and ought not to be re-opened. This will properly limit the inquiry to the conduct of the house and the character of the licensee, and perhaps the condition of the house, but as matter of fact and not as matter of law.⁴

Continuance of Expiring License pending Appeal.—Where the justices refuse to renew a license or certificate, and an

¹ L. A. 1872, § 48.

² See *post*, Section VIII., p. 43.

³ Per Lord Bramwell, in *Sharp v. Wakefield*, [1891] A. C. p. 184.

⁴ Per Lord Halsbury, L.C., S. C., p. 181.

appeal against such refusal is duly made, and such license expires before the appeal is determined, the Commissioners of Inland Revenue may, by order, permit the person whose license is refused to carry on his business during the pendency of the appeal upon such conditions as they think just; and, subject to such conditions, any person so permitted may, during the continuance of such order, carry on his business in the same manner as if the renewal of the license or certificate had not been refused.¹

¹ L. A. 1872, § 53. No printed form is used for this purpose, the authority being given by letter. As to appeals, see *post*, p. 53.

SECTION V.

REMOVAL ORDERS AND PROVISIONAL GRANTS.

Removals.—The justices at the general annual licensing meeting, or any adjournment thereof, may also make removal orders, removing licenses and certificates from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county.¹

Application, how made—Notices.—The application for a removal order must be made by the person desiring to be the holder of the license when removed. It must be made at the Annual General Meeting (or an adjournment thereof) to the justices authorised to grant *new* licenses in the licensing district in which the premises are situated to which the license is to be removed.

Notice of the intended application must be given in the same manner as is required in the case of an application for a new license or certificate.¹

A copy of the notice must be personally served upon or sent by registered letter to the owner of the premises from which the license is to be removed, and the holder of the license, unless he is also the applicant.²

Objection by Owner of Premises.—The justices on hearing such an application must be satisfied, before they sanction such a removal, that no objection thereto is made by the

¹ See *ante*, p. 11.

² L. A. 1872, § 50. This jurisdiction extends to off licenses and certificates, as well as to those for consumption on the premises. *R. v. Thornton*, [1897] 2 Q. B. 308; 61 J. P. 470; 66 L. J. Q. B. 774; affirmed, 62 J. P. 68; 67 L. J. Q. B. 249; [1898] 1 Q. B. 334.

owner of the premises to which the license is attached, or by the holder of the license, or by any other person whom they shall determine to have a right to object to such removal.¹

In a recent case the holder of an off license, who occupied his house under a lease shortly to expire, applied for a license for other premises, offering to surrender the off license he then held. On this condition the justices granted his application. The owners of the premises objected, on the ground that this was in fact a removal of a license, that they had not been served with notice as required by § 50 of the Licensing Act, 1872, and were opposed to any such removal. The Court sustained the objection, holding that this, in fact, was a removal of a license, and that in the circumstances the justices had acted without jurisdiction.²

Confirmation of Order.—No removal order—where the license or certificate removed is one authorising sale for consumption on the premises—is valid until confirmed by the confirming authority of the licensing district.² In the case of an off license or certificate no confirmation is required.³

There is no appeal from a refusal by justices to grant or confirm a removal order.

Provisional Grants.—Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors for indoor consumption, may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a license or certificate in respect of such premises; and the justices and the confirming authority, if satisfied with the plans submitted to them of such house, and that if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a license or certificate in respect thereof, may make such provisional grant and order of confirmation accordingly.⁴

¹ L. A. 1872, § 50. ² *R. v. Thornton, supra.* ³ *Ibid.* 1874, § 24. ⁴ *Ibid.*, § 22.

Notices on Application.—In applying for such provisional license the applicant must give the notices and follow the procedure required in the case of a new grant. But where a notice is required to be fixed on the door of the house, it may, in the case of an application for a provisional grant, be fixed instead, in a conspicuous position on any part of the premises.¹

A building is completed in accordance with the plans when in substantial accordance therewith. Therefore a departure from the plans will not divest the justices of their power to sanction so long as the building in fact erected is substantially that which was originally proposed.²

Provisional Grant not valid till declared final.—A provisional license or certificate has no validity until declared final by the justices, after such notice has been given as may be required, at a general annual licensing meeting or at a special licensing sessions. But, upon completion of the new house in accordance with the approved plans, the justices must declare the grant and confirmation final if they are satisfied that no objection can be made to the character of the holder.³

A provisional license or certificate may be renewed at the next general annual licensing meeting; and where such renewal is refused, the licensee may appeal in the ordinary way.⁴

Provisional Removals.—The foregoing provisions as to the provisional grant of licenses and certificates apply equally to cases of removals under § 50 of the Licensing Act, 1872.⁵ Where, therefore, a license holder desires to remove to some new house, which he intends to build or adapt to the purposes of his business, he may protect himself by first obtaining the sanction of the justices to his proposed plans.

Fees payable on Licenses and Certificates granted at the

¹ L. A. 1874, § 22. As to new grants, see *ante*, pp. 11, 12, 13.

² Per Matthew, J., in *R. v. London Justices*, 24 Q. B. D. 345; 59 L. T. M. C. 71; 54 J. P. 213; 62 L. T. 458; 38 W. R. 269; *R. v. Pownall*, 63 L. T. 418; 54 J. P. 438.

³ L. A. 1874, § 22.

⁴ *R. v. London Justices*, *supra*, *post*, p. 53.

⁵ L. A. 1874, § 22.

General Annual Meeting.—The fees payable in respect of new grants of licenses and certificates at the general annual licensing meeting are as follows¹:—

	£	s.	d.
To the petty constable for notices	0	1	0
To the clerk to the justices on grant	0	5	0
To the clerk to the justices for notices to be delivered by petty constable	0	1	6

The same fees are payable in respect of the renewal of licenses.²

The fees payable on the renewal of certificates are as follows³:—

	£	s.	d.
To the constable for service of the notices	0	1	0
To the clerk to the justices	0	4	0

Any clerk to justices demanding or receiving more than the above fees, is liable to a penalty of £5.⁴

¹ 9 Geo. IV. c. 61, § 15; 32 & 33 Vict. c. 27, § 8.

² 9 Geo. IV. c. 61, § 15.

³ 33 & 34 Vict. c. 29, § 4 (3).

⁴ 9 Geo. IV. c. 61, § 15; 33 & 34 Vict. c. 29, § 4 (3).

SECTION VI.

LICENSING AT SPECIAL SESSIONS—TRANSFER GRANTS.

Origin of Jurisdiction.—In addition to their jurisdiction to grant and renew licenses and certificates at the general annual licensing meeting, the licensing justices have also jurisdiction to grant licenses and certificates at special sessions. The extent and nature of this jurisdiction may now be considered.

As in the case of the general annual meeting, this jurisdiction is derived from the Alehouse Act, 1828.¹ By § 4 of that Act it is provided that the justices assembled at the general annual licensing meeting in every year, shall appoint not less than four or more than eight special sessions to be held during the ensuing year, at periods as near as may be equally distant, for the purpose of licensing such persons intending to keep inns, alehouses, or victualling houses, theretofore kept by other persons being about to remove from them, as they, the licensing justices, shall deem fit and proper persons. As in the case of the general annual meeting, notices must be given of the day, hour, and place for holding every such special session.² § 14 of the same Act enumerates cases in which, and persons to whom, the justices may grant licenses at such special sessions,³ and by the Wine and Beerhouse Act, 1870,⁴ the provisions of the Alehouse Act apply equally to wine and beerhouse certificates.⁵

¹ 9 Geo. IV., c. 61.

² Ibid., see *ante*, p. 6.

³ *Murray v. Freer*, per Lord Herschell, [1894] A. C., at p. 582.

⁴ 33 & 34 Vict. c. 29, § 4 (5).

⁵ In the case of "off" beer certificates, it would seem that § 2 of 45 & 46 Vict. c. 34 has taken away the jurisdiction to grant these certificates at special sessions. Otherwise it appears impossible to give any meaning to

Licenses and certificates granted at special sessions only continue in force from the day on which they are granted till the 5th day of April, in Middlesex and Surrey, and elsewhere the 10th day of October, next ensuing.¹

These licenses and certificates are usually called transfers, inasmuch as they can only be granted by the justices in lieu of some other license or certificate (as the case may be) previously granted at a general annual licensing meeting. In one sense, however, they are new grants, either in respect of the persons who receive them or the premises to which they apply.

Cases in which Special Sessions have Jurisdiction.—The wording of § 4 of the Alehouse Act, 1828, is obscure, and when read in conjunction with § 14, to which it appears to expressly refer,² would seem to contradict the provisions of that section by limiting the cases in which the justices may grant licenses at special sessions, to cases where the former license-holder is still in possession of the house and about to remove from it. Probably the best interpretation that can be put upon sections so ambiguously framed is, that while to a certain extent they must be read together, § 14 goes beyond, and is supplemental to § 4.³ The latter section appears to give the special sessions jurisdiction, in the ordinary case of a change of tenancy, to transfer the license or certificate to the incoming tenant; while § 14 specifies special cases in which (what may for convenience be called) grants by way of transfer may be made.⁴ These cases are as follows:—

1. Where a duly licensed person has, during the currency of his license or certificate, died or become, by reason of sickness or other infirmity, incapable⁵ of keeping

that section. It may be doubted, however, whether this result was intended by the Legislature.

¹ 9 Geo. IV., c. 61, § 14. *R. v. Northumberland Justices*, 43 J. P. 271.

² See *Freer v. Murray*, [1894] A. C. p. 582, per Lord Herschell.

³ As to these sections, see *R. v. Hughes*, [1893] 2 Q. B. 530; 62 L. J. M. C. 150; 58 J. P. 151; 42 W. R. 94. *R. v. West Riding Justices*, 14 T. L. R. 89; per Mathew, J.

⁴ See *Claydon v. Green*, L. R. 3 C. P. 511; 37 L. J. C. P. 236; 18 L. T. 607.

⁵ See L. A. 1874, § 15, and *post*, p. 36.

the licensed premises, or has become bankrupt, the justices may at special sessions grant a license or certificate of the like kind to the heirs, executors, or administrators of the person so dying, to the assigns of the person so incapacitated, or to the assignee or assignees of such bankrupt.

2. Where a duly licensed person or his heirs, executors, administrators, or assigns removes from or yields up the possession of the licensed premises, or where the occupier, being about to quit the licensed premises, wilfully neglects to apply at the general annual licensing meeting for a license to continue to sell excisable liquors by retail therein, the special sessions may grant a like license or certificate (as the case may be) to any new tenant¹ or occupier, or to any person to whom such heirs, executors, administrators, or assigns shall by sale or otherwise have *bonâ fide* conveyed or otherwise made over his or their interest in the occupation and keeping of the house.

3. Where any house being kept as a licensed house by any person duly licensed shall be, or be about to be, pulled down or occupied under the provisions of any Act for the improvement of the highways or for any other public purpose, or shall be by fire, tempest, or other unforeseen and unavoidable calamity rendered unfit for use as licensed premises, the justices at special sessions may grant a like license or certificate to the person whose house it is, who shall open and keep as licensed premises some other fit and convenient house.

"The person whose house it is," means such person, *i.e.* the licensed person, keeping the house rendered unfit for use as licensed premises. It does not mean the owner or some new tenant of the substituted house.²

Application by Transferor—Notices.—The application to special sessions for the transfer of a license or certificate

¹ The words "any new tenant" in the Act mean "The immediate new tenant who has not already obtained a license." Per Smith, J., in *R. v. Powell*, [1891] 1 Q. B. 718; [1891] 2 Q. B. 693; 56 J. P. 52; 60 L. J. M. C. 594; 65 L. T. 210; 39 W. R. 630; see also *Davies v. Evans*, 14 T. L. R. 163; 62 J. P. 120.

² *R. v. West Riding Justices*, 14 T. L. R. 89; 67 L. J. Q. B. 279.

may be made by the licensed person who desires to transfer his license or certificate to a new occupier of the house. In such case the applicant must comply with the provisions of § 40 of the Licensing Act, 1872,¹ and serve a notice of his intention to transfer his license or certificate, as the case may be, upon one of the overseers of the parish, township, or place in which the premises in question are situate, and also on the superintendent of police of the district. This notice, which must be given fourteen clear days before the special transfer sessions to which the application to transfer is going to be made, must be signed by the applicant or his authorised agent, and must set forth the name of the intended transferee together with the place of his residence and his trade or calling during the six months preceding the service of the notice.²

If the application is to transfer a license or certificate to a new unlicensed house in one of the cases provided for by § 14 of the Alehouse Act, 1828, the transferor must give the notices which are required to be given on an application to the general annual licensing meeting for a new license.³

Application by Transferee.—If the application for the grant of a transfer license or certificate is made by the transferee, § 40 of the Licensing Act, 1872, does not apply, and no notice need be given.⁴ To this rule there is an exception in the case of an application falling within the proviso at the end of § 14 of the Alehouse Act, 1828, *i.e.* where a transfer is asked in respect of premises in which intoxicating liquors have not been sold by retail for indoor consumption by virtue of a license granted at the general annual licensing meeting last preceding such application. In such case the applicant, whether transferor or transferee,

¹ See *R. v. Hughes*, *supra*.

² As to sending notices by post, see L. A. 1872, § 70, and *ante*, pp. 11, 12.

³ 9 Geo. IV. c. 61, § 14; L. A. 1872, § 40. As to these notices, see *ante*, p. 11, 12.

⁴ *R. v. Hughes*, [1893] 2 Q. B. 530; 62 L. J. M. C. 150; 57 J. P. 500; 42 W. R. 94; *R. v. Grove*, 57 J. P. 454; § 11 of 9 Geo. IV. c. 61 (now repealed) which provided the notice to be given of transfer applications under that Act (except in cases within the provision of § 14) only applied where the applicant was the transferor or his heir, etc.

must give the notices required on an application to the general annual meeting for a new grant.

Hearing of the Application.—Any person may appear and oppose a transfer at special sessions. On applications for the transfer of certificates the justices may adjourn if they think fit.¹ They have the same discretion to grant or refuse the transfer of a license or certificate from one person to another as they would have in like case on an application for a renewal at the general annual meeting.²

The failure of an applicant to obtain a grant by way of transfer from the special sessions in the case of a change of tenant does not prevent a transfer being subsequently granted in respect of the same premises to some other person; for a decision adverse to one new tenant is not *res judicata*, as regards the application of any subsequent tenant.³ But where a new tenant applies to a general annual licensing meeting for a renewal and is refused, he cannot subsequently apply to the special sessions for a transfer in respect of the same premises. In such case the decision of the general annual meeting is *res judicata* as regards a subsequent application by the same person to special sessions.⁴

It is otherwise, however, as regards a subsequent application by a different tenant. Thus where the license holder of an inn yielded up possession of the premises in December, 1890, and a new tenant was refused a transfer in May, 1891, and another new tenant applied for and failed to obtain a renewal at the general annual meeting, in September, it was held, notwithstanding such last refusal, that the justices in special sessions had jurisdiction to grant a transfer license to a third new tenant in March, 1892.⁵

Nor, as the above case shews, is it always necessary

¹ 33 & 34 Viet. c. 29, § 4 (4).

² *Simmonds v. Blackheath Justices*, 17 Q. B. D. 768; 55 L. J. M. C. 166; 50 J. P. 743; 35 W. R. 167; *R. v. Norfolk Justices*, L. R. 7 Q. B. 490; 41 L. J. M. C. 175; 37 J. P. 103; 26 L. T. 732.

³ *R. v. Upper Osgoldcross Justices*, 53 J. P. 823; 62 L. T. 112; *R. v. Powell*, [1891] 2 Q. B. 693; 60 L. J. Q. B. 594; 56 J. P. 52; 65 L. T. 210; 39 W. R. 630; *R. v. Thomas*, [1892] 1 Q. B. 426; 61 L. J. M. C. 141; 66 L. T. 289; 56 J. P. 151; 40 W. R. 472.

⁴ *R. v. Taylor*, L. R. 7 Q. B. 487; 42 L. J. M. C. 13; 37 J. P. 101.

⁵ *Baldwin v. Dover*, [1892] 2 Q. B. 421; 56 J. P. 423; 61 L. J. M. C. 215.

that the application to the special sessions should be made during the currency of the original license.¹ Indeed, where the application is made in consequence of the occupier having wilfully neglected to apply for a license to the general annual meeting, the current license must in most cases have already expired, before a transfer can be obtained at special sessions.² When this is so, the license granted by the special sessions would seem to be, in one sense, a renewal of the previous license till the following 10th of October or 5th of April, as the case may be, rather than a transfer, for at the time of the grant there is nothing left to transfer. But such grant has no retrospective effect, and only bears date from the time when it is granted.³

If the application is made in consequence of the removal of a previous tenant, or of his yielding up possession, care must be taken to see that such tenant does in fact remove from the licensed premises before the license in respect of them has expired. For the special sessions in such cases only have jurisdiction if the premises given up or removed from were still "duly licensed" at the time of such removal.⁴

When Time Limited for Applying.—Although the Alehouse Act, 1828, does not limit the time within which an application for a transfer may be made to special sessions, nevertheless, in some cases the time is now limited under the Licensing Act, 1874. These are the four cases which, for the protection of owners of licensed premises, have been brought within the meaning of the words "incapable of keeping an inn."⁵ In any of these cases the application must be made to the next special sessions.⁶ These cases

¹ See also *R. v. Middlesex Justices*, L. R. 6 Q. B. 781; 40 L. J. M. C. 184; 25 L. T. 41; 35 J. P. 599; 19 W. R. 960; *Freer v. Murray*, [1893] 1 Q. B. 281, 635; [1894] A. C. 576; 62 L. J. M. C. 33; 63 L. J. M. C. 242; 68 L. T. 507; 71 L. T. 444; 57 J. P. 101, 583; 58 J. P. 508; 41 W. R. 450; *R. v. Upper Osgoldcross Justices*, 53 J. P. 823; 62 L. T. 112.

² *R. v. Liverpool Justices*, 11 Q. B. D. 638; 52 L. J. M. C. 114; 47 J. P. 596; 49 L. T. 244; 32 W. R. 20.

³ 9 Geo. IV. c. 61, § 14.

⁴ *Simplin v. Birmingham Justices*, L. R. 7 Q. B. 482; 41 L. J. M. C. 102; 36 J. P. 709; 26 L. T. 620; 20 W. R. 702.

⁵ L. A. 1874, § 15.

⁶ *Stevens v. Green*, 23 Q. B. D. 143; 58 L. J. M. C. 167; 61 L. T. 240; 53 J. P. 423; 37 W. R. 605.

arise where a licensed person either forfeits his license or certificate or becomes personally disqualified, in consequence of a first conviction of any one of the following offences:—

1. Making an internal communication between his licensed premises and any unlicensed premises;
2. Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;
3. Selling spirits without a license;
4. Any felony.¹

A conviction of the first of these offences under § 9 of the Licensing Act, 1872, entails forfeiture of the license or certificate held by the offender.² As regards the second offence, any person making use of a forged certificate, knowing it to be forged, is disqualified from obtaining thereafter a license for the sale by retail of beer, cider, or wine.³ No forfeiture or disqualification attaches for a first offence of selling spirits without a license under § 3 of the Licensing Act, 1872; but by two earlier statutes,⁴ a person so convicted is for ever disqualified from selling beer or wine by retail, whether or not the provisions of these statutes operate against a person convicted under § 3 (with which they are inconsistent) has not yet been decided.⁵ Any person convicted of felony is for ever disqualified from selling by retail beer, cider, wine, or spirits.⁶

Discretion of Justices.—The discretion of the justices to grant or refuse applications by owners to special sessions under § 15 of the Licensing Act, 1874, is the same as in other cases of transfer under the provisions of the Alehouse Act, 1828; and an owner is not entitled to notice of opposition to his application.⁷

Where the application to special sessions is to transfer the license from a house about to be pulled down or

¹ L. A. 1874, § 15.

² *R. v. West Riding Justices*, 11 Q. B. D. 417; 52 L. J. M. C. 99; 48 J. P. 149.

³ 32 & 33 Vict. c. 27, § 11.

⁴ 3 & 4 Vict. c. 61, § 7; 23 & 24 Vict. c. 27, § 22.

⁵ *R. v. Roper*, 55 J. P. 68.

⁶ 3 & 4 Vict. c. 61, § 7; 23 & 24 Vict. c. 27, § 22; 33 & 34 Vict. c. 29, § 14.

⁷ *R. v. Moore*, 7 Q. B. D. 542; 50 L. J. M. C. 121; 45 J. P. 768.

occupied for public purposes to some other house, the justices have all the discretion to refuse the grant that they would have in the case of a new license applied for at the general annual meeting; and may properly consider whether the new house is in a neighbourhood already sufficiently supplied with licensed houses.¹

The jurisdiction given to justices at special sessions under this provision does not extend to the case where a house has been voluntarily pulled down in anticipation of expected improvements and before any Act has been passed necessitating its removal.²

In considering an application for the transfer to another house of the certificate of a privileged beerhouse about to be pulled down for a public purpose, the justices at special sessions have an unfettered discretion to grant or refuse the transfer, and are not confined to the four grounds stated in § 19 of the Beerhouse Act of 1869—for the privilege attaches only to the original house, and not to the licensee.³

Only one license or certificate can be obtained from special sessions, under § 14 of the Alehouse Act, by the same tenant in respect of the same premises; having obtained such license or certificate, his next application must be for a renewal to the general annual meeting. If the law were otherwise, a man might go on obtaining a transfer license from special sessions year after year for the rest of his life.⁴

Fees Payable on Licenses and Certificates granted at Special Sessions.—The fees payable upon the transfer of licenses and certificates are as follows:—

	£	s.	d.
To the petty constables for serving notices	0	1	0
To the clerk to the justices	0	5	0
To the clerk in respect of precept and notices to be delivered by petty constables	0	1	6

Any clerk to justices demanding or receiving more than the above fees is liable to a penalty of £5.⁵

¹ *Boodle v. Birmingham Justices*, 45 J. P. 636.

² *R. v. Northumberland Justices*, 43 J. P. 271.

³ *Traynor v. Jones*, [1894] 1 Q. B. 83; 57 J. P. 724.

⁴ *R. v. Powell*, [1891] 1 Q. B. 718; [1891] 2 Q. B. 693; 56 J. P. 52; 60 L. J. M. C. 594; 65 L. T. 210; 39 W. R. 630.

⁵ 9 Geo. IV. c. 61, § 15; 33 & 34 Vict. c. 29, § 4 (5).

SECTION VII.

LICENSING AT PETTY SESSIONS—TEMPORARY AUTHORITIES AND LICENSES.

Temporary Authorities.—Under the Licensing Act, 1842, justices sitting at petty sessions may at any time, when no special sessions shall be holden, authorise a person who intends to apply for a transfer to himself (such person not being disqualified) to carry on the business upon the licensed premises until he can have the opportunity of applying for such transfer to a special licensing session.¹

Licensing justices at petty sessions only have this jurisdiction in cases where special sessions are empowered to grant a transfer from one person to another in respect of the same premises, and where the license or certificate subsequently to be transferred is still unexpired.¹

Granted by Endorsement.—This temporary authority which is granted by the majority of the justices present by endorsement upon the current license or certificate, only continues in force until the next special sessions. It entitles the person so authorised to a like authorisation from the excise authorities.

If the current license or certificate has been lost or

¹ 5 & 6 Vict. c. 44, § 1; extended to certificates by 32 & 33 Vict. c. 29, § 4 (5). The justices to whom this application should be made are the justices acting for the district in which the premises are situated. Only justices qualified under L. A. 1872, § 60, can grant temporary authorities. See 5 & 6 Vict. c. 44, § 4; 33 & 34 Vict. c. 29, § 4 (5); 37 & 38 Vict. c. 36; L. A. 1872, §§ 60, 74.

mislaid, or is wilfully withheld by the holder thereof, this authority may be given to the intended transferee by endorsement upon a copy certified under the hand of the clerk of the justices who granted such license or certificate at the general annual licensing meeting.¹ A fee of two shillings and sixpence is payable upon every such certified copy and every such endorsement.²

In the case of premises situated within the metropolitan police district (except in the borough of Southwark) this jurisdiction is vested, not in the justices; but in the police magistrates, to one of whom the application for a temporary authority in such case must be made.³

Evidence in support of these applications must be given upon oath, and the Court has a discretion to grant or refuse the authority, as it may deem fit.⁴

Liability of Holder of Temporary Authority.—Persons conducting a licensed house under a temporary authority, pending an application for a grant by way of transfer, are subject to all the statutory powers, regulations, proceedings, penalties, and provisions in force touching the control of licensed houses.⁴ But the holder of such an authority is not otherwise a licensed person within the meaning of the Licensing Acts; therefore, where the next special sessions and the next general annual licensing meeting were held on the same day, and the person so authorised, as above, sought to obtain a renewal license from the annual meeting, it was held that his application might properly be refused by the justices, although no notice of opposition had been given, as he was not a licensed person applying for the renewal of "his license," within the meaning of § 42 of the Licensing Act, 1872.⁵

The granting of a temporary authority does not determine the current license, and the original licensee may thereafter continue to sell under his license on his own

¹ 5 & 6 Vict. c. 44, § 2, as amended by L. A. 1872, § 41. See also 47 & 48 Vict. c. 29, § 1.

² 5 & 6 Vict. c. 44, § 3.

³ Ibid., § 1.

⁴ Ibid.

⁵ *Price v. James*, [1892] 2 Q. B. 428; 61 L. J. M. C. 203; 67 L. T. 543; 41 W. R. 57; 56 J. P. 471; 57 J. P. 148.

behalf if the grantee of such authority does not enter and take over the house.¹

Nor is it necessary that the person seeking such authority should have entered into possession before the application for the authority is made.²

Temporary Continuance of Licenses in Cases of Forfeiture—Protection of Owner.—Justices sitting as a court of summary jurisdiction may also grant, in certain cases of forfeiture, authority to the owner of licensed premises to carry on the licensed business till the next recurring special session. Thus, where any licensed person is convicted for the first time of any one of the following offences:—

1. Making an internal communication between his licensed premises and any unlicensed premises;³
2. Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;⁴
3. Selling spirits without a spirit license;⁵
4. Any felony;⁶

and, in consequence, either becomes personally disqualified, or has his license or certificate forfeited. There may be made, *by or on behalf of the owner of the premises* an application to a court of summary jurisdiction⁷ for authority to carry on the same business upon the same premises until the next special sessions for licensing purposes; and for this purpose the provisions contained in the Alehouse Act, 1828,⁸ with respect to the grant of a temporary authority shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.⁹

¹ *Andrews v. Denton*, [1897] 2 Q. B. 37; 66 L. J. Q. B. 520; 76 L. T. 423; 45 W. R. 500.

² S. C., per Wright, J.

³ See L. A. 1872, § 9.

⁴ See 32 & 33 Vict. c. 27, § 11.

⁵ See L. A. 1872, § 3; 23 & 24 Vict. c. 27, § 22.

⁶ 3 & 4 Vict. c. 61, § 7; 23 & 24 Vict. c. 27, § 22; 33 & 34 Vict. c. 29, § 14.

⁷ L. A. 1874, § 15. In view of § 60 of L. A. 1872, it would seem that the court of summary jurisdiction must be a court of qualified licensing justices. (See also L. A. 1874, § 1.)

⁸ As amended or extended by 5 & 6 Vict. c. 44. No provision as to temporary authorities is contained in the Act of 1828.

⁹ As to the discretion of the justices to grant or refuse this authority see *R. v. Moore*, 7 Q. B. D. 542; 50 L. J. M. C. 121; 45 J. P. 768.

Temporary License pending Appeal against Conviction.—Under § 53 of the Licensing Act, 1872, where a license or certificate is forfeited on or in pursuance of a conviction for an offence, and an appeal is duly made against such conviction, the Court by whom the conviction was made may, by order, grant a temporary license to be in force during the pendency of the appeal upon such conditions as they think just. Whether or not this Court ought to consist of qualified justices will depend upon whether the offence is one which only such justices can try.

Consents to Occasional Excise Licenses.—The consent of a justice usually acting at the petty sessions for the petty sessional division within which the intended place of sale is situate is necessary before a licensed victualler's, or a refreshment house keeper's, occasional excise license can be obtained authorising sale beyond the usual licensed premises. This consent must be given in writing.¹

And the holder of such an occasional license is, so far as the provisions of the Licensing Act, 1872, which relate to offences against public order are concerned (*i.e.* §§ 12 to 18 inclusive) a "licensed person" within the meaning of that Act, and the occasional premises "licensed premises."²

Canteens.—Under the provisions of the Army Act, 1881,³ when a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any justices' license or certificate for the time being required to enable such person to obtain or hold any excise license for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, or otherwise, of any Acts for the time being in force affecting such licenses or certificates.⁴

¹ See 25 & 26 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, § 20; 27 & 28 Vict. c. 18, § 5; and *post*, p. 197, Section XXII.

² L. A. 1874, § 20.

³ 44 & 45 Vict. c. 58, § 174.

⁴ The sale of spirits in canteens was exempted from the operation of the Licensing Acts, 1872 and 1874, by § 72 (7) of the first of those Acts. See *post*, Section XII.

SECTION VIII.

LIMITATIONS UPON THE DISCRETION OF LICENSING
JUSTICES.

Grounds of Refusal in Cases of Limited Discretion.—It will now be convenient to consider in detail the grounds upon which licensing justices may refuse to grant or renew licenses or certificates in those cases in which their discretion so to do has been expressly limited by statute. These limitations restrict the grounds of refusal alike as to grants and renewals at the general annual licensing meeting, and as to grants at special sessions. First imposed as to the jurisdiction of the justices in the general annual meeting by the Wine and Beerhouse Act 1869,¹ and extended to the licensing jurisdiction at special sessions by the Wine and Beerhouse Act of 1870;² these limitations now have effect in the following cases: (1) certificates for the retail sale of beer, cider, or wine, for consumption on the premises where such premises were similarly licensed upon the 1st of May, 1869, and have since continuously³ remained so licensed;⁴ (2) certificates for the retail sale of cider (including perry) or wine for consumption off the premises; (3) licenses for the retail sale of liqueurs or spirits to be consumed off the premises (*i.e.* spirit-dealers'

¹ 32 & 33 Vict. c. 27, §§ 8, 9.² 33 & 34 Vict. c. 29, § 4 (5).³ *Freer v. Murray*, [1894] A. C. 576; [1893] 1 Q. B. 635; 63 L. J. M. C. 242; 62 L. J. M. C. 33; 58 J. P. 508; 57 J. P. 101, 583; 71 L. T. 44; 67 L. T. 507.⁴ *R. v. King*, 20 Q. B. D. 430; 57 L. J. M. C. 20; 52 J. P. 164; 58 L. T. 607; 36 W. R. 600. In the case of these privileged beerhouses the discretion is, of course, only limited as to renewals and transfers.

additional licenses),¹ and (4) off licenses for the sale of sweets under the Licensing Act, 1872.²

In these cases the justices' jurisdiction to refuse a certificate or license is limited to one or more of the following grounds:—³

(1) **Character of Applicant.**—That the applicant has failed to produce satisfactory evidence of good character.

The onus of establishing his good character is on the applicant, it is not to be assumed in his favour; ⁴ and for this purpose he ought to call witnesses, and not rely on putting in written characters or testimonials.⁵ The object of the legislature in requiring the applicants to be persons of good character, is to prevent the danger of licensed houses being kept by people of bad character, and so becoming the resort of dishonest and immoral people, who might there plan and concoct their schemes, and so conduct themselves as to set at defiance the feelings of the public.⁶

In a case where the only evidence of bad character was a single conviction of Sunday trading within prohibited hours, and the applicant called evidence of excellent general character, Lord Esher, M.R., observed: "In my opinion such a conviction as this ought not to affect such a character as he was able to prove. A good character for many years ought not to be destroyed by one such slip as this."⁷ Co-habitation with a female to whom the applicant is not married, does not necessarily imply that he is of bad character.⁸

Notice to an applicant that there is a conviction against him, is notice that the objection to his renewal is on grounds of character.⁹

(2) **Character of House.**—That the house or shop in

¹ L. A. 1872, §§ 68, 69.

² Ibid. § 74.

³ 32 & 33 Vict. c. 27, § 11.

⁴ *R. v. Pilgrim*, L. R. 6 Q. B. 96; 40 L. J. M. C. 3; 35 J. P. 167; 23 L. T. 410; 19 W. R. 99.

⁵ *R. v. Hanley Justices*, 42 J. P. 103; 39 L. T. 444.

⁶ *Per Erle, C.J.*, in *Leader v. Zell*, 16 C. B. (N.S.), 584; 33 L. J. M. C. 231; 28 J. P. 470.

⁷ *R. v. Lancaster Justices*, 55 J. P. 580; 64 L. T. 562.

⁸ *Leader v. Zell*, *supra*.

⁹ *R. v. Lancaster Justices*, *supra*; *R. v. Birmingham Justices*, 40 J. P. 132.

respect of which a license is sought, or any adjacent house or shop, owned or occupied by the person applying for a license, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character.

Recent convictions against previous tenants are evidence that a house is of a disorderly character.¹

(3) **Misconduct of Applicant.**—That the applicant having previously held a license for the sale of wine, spirits, beer or cider, the same has been forfeited for his misconduct, or that he has, through misconduct, been at any time previously adjudged disqualified from receiving any such license, or from selling any of the said articles.

A license may be forfeited for harbouring thieves, under the Prevention of Crimes Act, 1871;² and under the Unlawful Societies Act, 1799, and the Seditious Meetings Act, 1817,³ for allowing a seditious meeting to be held upon the licensed premises. Under the Licensing Act, 1872, a conviction of permitting licensed premises to be used as a brothel forfeits the holder's license;⁴ and so likewise where a license has for the third time a conviction recorded upon it for an offence against that Act it is forfeited.⁵

Certain offences entail personal disqualification: thus a conviction for felony, or for selling spirits without a license, also disqualifies the person so convicted from ever holding a beer and cider retail license,⁶ or a retail wine license.⁷ Again, any person convicted of felony is for ever disqualified from selling spirits by retail.⁸ Any person making use of a justice's certificate (authorised to be granted under the Wine and Beerhouse Act, 1869) knowing that the same is forged is disqualified from obtaining thereafter a retail license for the sale of beer, cider, or wine.⁹ Any licensed person convicted under § 15 of the

¹ *R. v. Miskin Justices*, [1893] 1 Q. B. 275; 57 J. P. 263; 67 L. T. 680.

² 34 & 35 Vict. c. 112, § 10.

³ 39 Geo. III. c. 73, § 14; 57 Geo. III. c. 19, § 29.

⁴ L. A. 1872, § 15.

⁵ *Ibid.* § 30, but see also § 32.

⁶ 3 & 4 Vict. c. 61, § 7.

⁷ 23 Vict. c. 27, § 22.

⁸ 33 & 34 Vict. c. 111, § 14.

⁹ 32 & 33 Vict. c. 27, § 11.

Licensing Act, 1872, of permitting his premises to be used as a brothel is, by such conviction, disqualified for ever from holding any license for the sale of intoxicating liquor. Again, any person who has been twice convicted of selling or exposing for sale by retail any intoxicating liquor, which he is not duly licensed to sell, or of selling or exposing for sale such liquor at a place where his license does not authorise him so to do, may, by order of the Court by which he is tried, be disqualified for a term not exceeding five years from holding any license; on a third conviction such person may be disqualified for ever.¹ Further, any licensed person whose license has a conviction for an offence against the Licensing Act, 1872, for the third time recorded upon it, is disqualified for five years from being the holder of any license.²

(4) **House or Applicant not Qualified.**—That the applicant, or the house in respect of which he applies, is not duly qualified as by law required.

Applicant not Qualified.—Certain persons are by statute expressly disqualified from holding justices' licenses or certificates. Thus, every sheriff's officer, or officer executing the legal process of any Court of justice is disqualified from receiving or using any license under the Alehouse Act, 1828,³ and from taking out any license for selling beer, ale, or porter by retail.⁴ So, too, any applicant who is not the real resident holder and occupier of the premises sought to be licensed is disqualified from holding a retail beer or cider license, whether for consumption off or on the premises, under the Beerhouse Acts.⁵ But no residence qualification is required in the case of an additional beer "off" license, granted to a wholesale beer-dealer under 26 & 27 Vict., c. 33.⁶

¹ L. A. 1872, § 3.

² *Ibid.*, § 30.

³ 9 Geo. IV. c. 61, § 16.

⁴ 1 Wm. IV. c. 64, § 2.

⁵ 3 & 4 Vict. c. 61, § 1. The licensee must reside and sleep upon the premises, which must be a dwelling-house: *R. v. Allmey*, 35 J. P. 534. Where the holder of a certificate was a spinster, who married during its currency, this was held not to avoid the license. *Hazell v. Middleton*, 45 J. P. 540.

⁶ *R. v. De Rutzen*, 1 Q. B. D. 55; 45 L. J. M. C. 57; 40 J. P. 150; 33 L. T. 726; 24 W. R. 343.

The disqualifications of persons arising out of offences have been noticed above. No license or certificate may be granted under the Licensing Acts, 1872 and 1874, or under the Alehouse Act, 1828, or the Wine and Beerhouse Acts, 1869 and 1870, to any person disqualified under any of these Acts. Any license or certificate so granted during the continuance of such disqualification is void.¹

House not duly Qualified—Annual Value.—This refers to those cases where, by statutory provision, premises are required to have a certain rateable annual value before a license or certificate can be granted in respect of them. It does not import that the justices may judge in a general way as they think fit of the qualification of each particular house; and, therefore, if, for the license sought, no minimum annual value is required by statute, the justices are not entitled to refuse the license merely because the annual value of the premises is in their opinion too low.²

Prior to the Licensing Act, 1872, no qualification value had been imposed upon houses for which an alehouse or publican's license was sought by the applicant. But beer-houses and refreshment houses were required to have a certain rent value. By § 45 of that Act, however, this requirement was also imposed in the case of all new alehouse licenses granted after the 10th of August, 1872.

As the rateable valuations imposed by the Licensing Act, 1872, only apply to houses licensed for sale by retail for consumption on the premises, the earlier enactments are still in force, so far as they apply to licenses to sell for consumption off the premises.³ Their purport may, therefore, be first stated. According to these provisions no dwelling-house could be licensed for the sale of beer or cider by retail unless rated at a rent or annual value, in London, Westminster, or any town whose population exceeded ten thousand, of £15; in towns of which the

¹ L. A. 1872, § 44.

² *R. v. Morison*, 55 J. P. 87; 49 J. P. 55.

³ Except that in these Acts the words "rent," "value," "rated on a rent or annual value," are to be read as if they were "annual value." See L. A. 1872, § 46; and as to "off" certificates and licenses not subject to any qualification value, see *infra*, pp. 48, 49.

population exceeded two thousand five hundred, but was under ten thousand, at a value of £11; and elsewhere, at an annual value of £8.¹ After 1870, houses seeking a new beer-dealer's additional retail license under 26 & 27 Vict., c. 23, also became subject to the foregoing restrictions as to value.²

By § 45 of the Licensing Act, 1872, a new code of regulations was introduced for houses licensed for consumption on the premises, the object being to ensure a better class of houses by raising the qualification.³ This section provides the following scale of qualification values for all such houses not licensed at the passing of that Act. (1) For houses situate within the City of London or the liberties thereof, or any parish or place subject to the jurisdiction of the Metropolitan Board of Works (now the London County Council), or within the four miles radius from Charing Cross, or within the limits of a town containing a population of not less than one hundred thousand inhabitants,⁴ an annual value of at least £50; or, if the license does not include spirits, a value of £30. (2) For houses situate elsewhere, but within the limits of a town of not less than ten thousand inhabitants, an annual value of not less than £30 if the license includes spirits, and £20 if not. (3) For houses situate elsewhere, and not within any such town as above mentioned, an annual value of at least £15 where the license includes spirits, and of £12 where it does not.

From these qualification requirements railway refreshment rooms are, however, expressly excepted.⁵

It has already been noticed that this scale of qualification values does not apply to houses licensed for

¹ The population to be estimated by the last parliamentary census. 3 & 4 Vict. c. 61, § 1.

² 33 & 34 Vict. c. 29, § 10.

³ Per Field, J., in *R. v. Cumberland Justices*, 8 Q. B. D. 369; 51 L. J. Q. B. 142; 46 J. P. 1; 30 W. R. 178.

⁴ "The population of any area for the purposes of this Act shall be ascertained according to the last published census for the time being." L. A. 1872, § 65.

⁵ L. A. 1872, § 45.

consumption off the premises, but that such houses are still subject to the earlier and lower scale of values. Some such houses have, however, always been free from any qualification value; such are, houses licensed for the outdoor sale of wine, under 23 & 24 Vict., c. 27, §§ 1, 8; and of table beer, under 24 & 25 Vict., c. 21, § 3; and a similar immunity exists under § 69 of the Licensing Act, 1872, in respect of a license for the outdoor sale of sweets, spirits, and liqueurs.

In addition to the qualification values above mentioned the Licensing Act, 1872, also imposed a further condition in the case of premises licensed after the passing of that Act for indoor consumption. Such premises must now be, in the opinion of the licensing authority, structurally adapted for the class of license for which application is made, and must contain, where spirits are sold, at least two rooms (exclusive of the rooms occupied by the inmates) for the accommodation of the public, and, where spirits are not sold, at least one such room.¹

Inasmuch as the qualification values imposed by the Licensing Act, 1872, do not apply to alehouses licensed before the 10th of August, 1872, such houses are still free from all requirements as to value.²

Annual Value, how ascertained.—By § 47 of the Licensing Act, 1872, it is provided that “the annual value of premises for the purpose of this Act shall be the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all tenant’s rates and taxes, and tithe commutation rent charge (if any), and if the landlord undertook to bear the costs of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no license were granted in respect thereof; but no land shall be included in such premises other than any pleasure grounds, or flower or

¹ L. A. 1872, § 45.

² *R. v. Exeter*, 37 J. P. 213; 42 L. J. M. C. 35; L. R. 8 Q. B. 235; 27 L. T. 847; 21 W. R. 329.

kitchen garden, yard, or curtilage, usually held and occupied and used by the persons residing in and frequenting the house."

By the same section the licensing justices are empowered to take whatever means they think best for ascertaining the annual value of any premises. If they think fit, they may order a valuation to be made by a competent person; appoint such person, and order the applicant to pay the costs of the valuation. As in the estimating of other rateable values, the rent actually earned by the premises at the time is some, but not conclusive, evidence of their real value.

A question may sometimes arise as to the extent of premises to be included in the valuation. In one case¹ the Court held that a shop occupied by the applicant with his house, to which it was attached, ought to be included in estimating the value of the house. The value to be considered is the value of the premises at the time of the hearing of the application.²

House affected by Convictions.—The incident of disqualification may also attach to premises as well as to persons by reason of convictions.

Thus premises become disqualified for a period of one year where (at least one conviction being already recorded on the license or certificate) four subsequent convictions are, within a period of five years, also so recorded.³ A like disqualification attaches to premises when the licenses or certificates of two persons in respect of them are forfeited within two years.⁴

Again, when a person on whose license or certificate two convictions against the Licensing Acts, 1872 and 1874, have

¹ *Garett v. Potts*, L. R. 6 Q. B. 86; 40 L. J. M. C. 1; 35 J. P. 168; 23 L. T. 554; 19 W. R. 127.

² But a house not qualified at the date of the general annual licensing meeting may become so qualified before the adjourned meeting. *R. v. Montague*, 49 J. P. 55.

³ L. A. 1872, § 31. This section does not apply to a conviction of any person licensed for any premises at the passing of this Act, so long as he is licensed in respect of the same premises.

⁴ L. A. 1872, § 31.

been recorded is convicted of any further offence which is directed by the justices to be recorded on his license, the premises in respect of which his license was granted shall, unless the Court, having cognisance of the case, in its discretion thinks fit otherwise to order, be disqualified from receiving any license or certificate for a term of two years from the date of such third conviction.¹

Where Justices must state Ground of Refusal.—Where justices refuse a renewal in the case of a privileged beer-house (*i.e.* a beerhouse licensed on and since the 1st of May, 1869), they ought to state the grounds of such refusal in open court, “in order to justify their decision and shew that they are acting within their jurisdiction.” And although there is no express enactment requiring them so to do, a mandamus will go to compel them to hear the case and determine it according to law, if they have not stated the grounds of their refusal.² The circumstance that the justices have subsequently disclosed upon affidavit the grounds on which they acted will not prevent the mandamus going, as such grounds ought to be stated by them at the time they give their decision.³

The same rule applies to a license for the sale of liqueurs or spirits by retail not to be consumed on the premises,⁴ and to an off certificate for the sale of cider or wine, which may only be refused on one of the above-named grounds.⁵ And in the last case it is expressly provided that, if the justices refuse the certificate upon the fourth ground, *viz.*, that the house in question is not duly qualified as by law

¹ L. A. 1872, § 31. This section does not apply to licensed persons who were licensed in respect of the same premises on the 10th of August, 1872. “Licensed person” here means licensed person as defined by this Act: see § 74.

² *R. v. Sylkes*, 1 Q. B. D. 54; *Ex parte Smith*, 3 Q. B. D. 374; 47 L. J. M. C. 104; 42 J. P. 598; 26 W. R. 682; *R. v. Huddersfield Justices*, 1 Q. B. D. 52; 45 L. J. M. C. 39; 40 J. P. 39; 33 L. T. 566; 24 W. R. 141; *R. v. Thomas*, [1892] 1 Q. B. 426; 61 L. J. M. C. 141; 56 J. P. 151; 66 L. T. 289; 40 W. R. 472; *Tranter v. Lancashire Justices*, 51 J. P. 454. But see *Herschell, L. C.*, in *Ex parte Gorman*, [1894] A. C. 27 & 28; 63 L. J. M. C. 84; 58 J. P. 316; 70 L. T. 46.

³ *Ex parte Smith*, *supra*.

⁴ *Ibid.* L. A. 1872, § 69.

⁵ 32 & 33 Vict. c. 27, § 8. See also 56 & 57 Vict. c. 54.

required, they must specify in writing to the applicant the grounds of their decision.¹ In *R. v. Cumberland Justices*,² this provision was held to be sufficiently complied with when the chairman read out the decision in the presence of the applicant from a written minute. But in that case the applicant made no request to be supplied with the decision in writing.³

No license or certificate shall be granted in respect of any premises disqualified under the provisions of any of the following Acts, viz. the Alehouse Act, 1828, the Wine and Beerhouse Acts, 1869 and 1870, and the Licensing Acts, 1872 and 1874, during the continuance of such disqualification. Any license or certificate attached to premises so disqualified is void.⁴

¹ 32 & 33 Vict. c. 27, § 8.

² 8 Q. B. D. 369; 51 L. J. Q. B. 142; 46 J. P. 7; 30 W. R. 178.

³ Where justices refuse, on grounds bad in law, the proper remedy would seem to be an appeal to Quarter Sessions. *R. v. Smith*, L. R. 8 Q. B. 146; 42 L. J. M. C. 46; 37 J. P. 214; 28 L. T. (N.S.) 129; 21 W. R. 382; *R. v. Ashton*, 37 J. P. 85. But in similar cases a mandamus has been granted. *R. v. Bedwellty Justices*, 38 J. P. 807; *R. v. King*, 20 Q. B. D. 430; 57 L. J. M. C. 20; 52 J. P. 164; 58 L. T. 607; 36 W. R. 600; *R. v. Scott*, 22 Q. B. D. 481; 58 L. J. M. C. 78; 53 J. P. 119; 37 W. R. 301; 60 L. T. 231.

⁴ L. A. 1872, § 44.

SECTION IX.

APPEALS FROM THE DECISIONS OF JUSTICES AT THE GENERAL ANNUAL LICENSING MEETING AND AT SPECIAL SESSIONS.

When an Appeal Lies—None as to New Grant—None by Opponent.—Formerly, under the provisions of the Alehouse Act, 1828, and the Wine and Beerhouse Act, 1869, an appeal lay to Quarter Sessions by any person aggrieved by a refusal of licensing justices to grant a new license or certificate. Now, however, under the Licensing Acts, 1872, and 1874, the decision of the confirming authority is final and conclusive as to all new licenses and certificates, and no appeal lies to Quarter Sessions from the refusal of such an application.¹

Nor does any appeal lie by an opponent against the decision of licensing justices where they grant a new license or certificate, or renew or transfer a license or certificate. No such right of appeal has ever been expressly given by statute to an opponent; and such an opponent is not “a person aggrieved” within the meaning of § 27 of the Alehouse Act, 1828.²

Renewals and Transfers.—An appeal lies where justices refuse to renew licenses or certificates at the general annual meeting, or to grant transfers at the special sessions.³ The appeal may be made by any person

¹ L. A. 1872, schedule; L. A. 1874, § 27. *Ex parte Tarbath*, 31 L. T. 513; 39 J. P. 101.

² *R. v. Middlesex Justices*, 3 B. & Ad. 938. “Aggrieved” means directly not consequentially aggrieved: *R. v. Surrey Justices*, 52 J. P. 423.

³ 9 Geo. IV. c. 61, § 27; 32 & 33 Vict. c. 27, § 8; *Thornton v. Clegg*, 24 Q. B. D. 132; 59 L. J. M. C. 6; 53 J. P. 742; 61 L. T. 562; 38 W. R. 160. 9 Geo. IV. c. 61, gave a right of appeal from the refusal of justices to grant

aggrieved by the refusal. The applicant who is refused a license or certificate is a person aggrieved, and will usually be the appellant. Where the owner of the premises is authorised under § 15 of the Licensing Act, 1874, to apply for a license or certificate to special sessions, the owner, in case of refusal, has a right of appeal.¹ So, likewise, where a tenant in occupation of the premises is refused a renewal or transfer, the owner, as a person whose property is thereby directly prejudiced, may appeal.² But such owner cannot obtain a license in his own name unless he is about to keep the premises.³ Where a license holder had under a mortgage deed constituted his mortgagees irrevocably his attorneys to act in his name with respect to his license, it was held that the mortgagees were entitled to appeal to Quarter Sessions against a refusal of a renewal of the license, and to obtain such renewal to the mortgagor still in occupation of the premises, although he personally stated he did not want a renewal.⁴

Appeal to County Quarter Sessions.—The appeal is in all cases to the county Quarter Sessions; a recorder of a borough having no jurisdiction to entertain such appeals, as under the Municipal Corporation Acts⁵ he is prohibited from granting any license to sell excisable liquors by

new or renew existing licenses; it also gave a right of appeal from decisions of justices at special sessions, see §§ 27, 28 and 29. By the second schedule to the L. A. 1872, these sections are repealed except in so far as they relate to the renewal of licenses or to the transfer of licenses under §§ 4 and 14 of the Alehouse Act. Some ambiguity arises from the definition "transfer of a license" in the L. A. 1872, which seems to limit those words to licenses granted under § 4. The correct view would seem to be that § 14 is in fact only an amplification of § 4, and must be read with it, as if they constituted one section: see *Freer v. Murray*, [1894] A. C. 582, per Lord Herschell, L. C. As to right of appeal in case of Beer "off" certificates, see *R. v. Schneider*, 11 Q. B. D. 66; 52 L. J. M. C. 51; 47 J. P. 596; 48 L. T. 482. As to provisional license, see *R. v. London Justices*, 24 Q. B. D. 341; 59 L. J. M. C. 71; 54 J. P. 213.

¹ *R. v. West Riding Justices*, 11 Q. B. D. 417; 52 L. J. M. C. 99; 48 J. P. 149.

² *Garrett v. Marylebone Justices*, 12 Q. B. D. 620; 53 L. J. M. C. 81; 48 J. P. 357; 32 W. R. 646. Cf., however, *R. v. Andover Justices*, 16 Q. B. D. 711; 55 L. J. M. C. 143; 55 L. T. 33; 2 T. L. R. 546; 50 J. P. 549; 34 W. R. 456. But this was a case of appeal against a conviction.

³ 9 Geo. IV. c. 61, § 1; *R. v. Holmes*, 45 J. P. 372.

⁴ *Garrett v. Marylebone Justices*, *supra*.

⁵ 5 & 6 Wm. IV. c. 76, § 105; 45 & 46 Vict. c. 50, § 165.

retail, and would therefore have no power to give effect to his decision should he reverse the justices below.¹

The right of appeal to Quarter Sessions must be exercised subject to the provisions contained in § 27 of the Alehouse Act, 1828, as amended by the Quarter Sessions Act, 1849.²

The appeal lies to the next general or quarter sessions of the peace for the district in which the premises in question are situate. No justice who was a party to the decision appealed from can sit to hear the appeal at Quarter Sessions.³

Notice of Appeal.—An intending appellant must give notice of his intention to appeal to each justice present at the annual meeting, adjourned meeting, or special sessions, as the case may be, when his application was refused. This notice, which must be in writing and signed by the appellant or his solicitor,⁴ must be served within five days of the decision appealed against.⁵ It may be served personally upon the justices; but it is not necessary that the service should be personal—all that the Act requires is that written notice within the prescribed time should have been given to each justice.⁶

The notice of appeal should include all the grounds

¹ The reason of this prohibition is that a recorder sits to administer law, and this is largely a question of expediency of which he would not be a proper judge: per Lord Campbell, C.J., in *R. v. Recorder of Bristol*, 24 L. J. M. C. 43; 19 J. P. 342; 4 E. & B. 265; see also *R. v. Deane*, 2 Q. B. 96.

² 9 Geo. IV. c. 61; 12 & 13 Vict. c. 45; *Boulter v. Kent Justices*, [1897] A. C. 556; 66 L. J. Q. B. 787; 61 J. P. 532; 46 W. R. 108. This case, which has decided that the procedure under the Summary Jurisdiction Acts does not apply to appeals from the refusals of justices to grant licenses or certificates, has reversed the practice followed since *R. v. Glamorganshire Justices*, [1892] 1 Q. B. 621; 61 L. J. M. C. 169; 56 J. P. 232; 66 L. T. 444; 40 W. R. 436; and restored the former practice on these appeals.

³ 9 Geo. IV. c. 61, § 27; 32 & 33 Vict. c. 27, § 8.

⁴ 12 & 13 Vict. c. 45, § 1. Or the solicitor's clerk; see *R. v. Kent Justices*, L. R. 8 Q. B. 305; 42 L. J. M. C. 112; 21 W. R. 635.

⁵ 9 Geo. IV. c. 61, § 27. In computing the five days Sundays must be counted; but service on Sunday is apparently bad, so that if Sunday be the fifth day, the appellant would seem to have only four days in which to serve this notice; see *Asprell v. Lancashire Justices*, 16 Jur. 1067; *R. v. Middlesex Justices*, 12 L. J. M. C. 59; 7 Jur. 396.

⁶ *R. v. Cheshire Justices*, 9 L. J. M. C. 89; 11 A. & E. 139; *R. v. Bedfordshire Justices*, 9 L. J. M. C. 9; 11 A. & E. 134; *R. v. Yorkshire Justices*, 14 L. J. M. C. 91; 7 Q. B. 154.

upon which the appellant relies. But the Quarter Sessions have a power of amendment where grounds of appeal are imperfectly or incorrectly set forth; and of the sufficiency of the notice the Quarter Sessions are the sole judges.¹

The notice to the justices is a fourteen clear days' notice. Therefore a Court of Quarter Sessions held too soon after the service of the notice of appeal to admit of the justices having fourteen clear days' notice is not the next Court of Quarter Sessions; and in such case the appeal will lie to the following Court.²

No notice is required to be given to an opponent. The granting of a license or certificate is not a proceeding *inter partes* between the applicant and the objector, but is one between the applicant and the public at large. Therefore a refusal is not properly speaking a determination in favour of the particular objector, but in favour of the public.³ This, taken in conjunction with the circumstance that the statute only provides for notice of the appeal being served on the justices, would seem to raise doubts whether an objector has any *locus standi* on appeal.⁴

The appellant must also enter into a recognisance, with two sufficient sureties before a justice acting in or for the county or place, conditioned to appear and try the appeal, abide the judgment of the Quarter Sessions thereon, and pay such costs as the Court shall award. This recognisance must also be entered into within five days from the refusal appealed against.⁵

After notice of appeal has been given and the appellant

¹ 12 & 13 Vict. c. 45, §§ 1, 3; *R. v. Lancashire Justices*, 41 J. P. 293.

² 12 & 13 Vict. c. 45, § 1.

³ *Boulter v. Kent Justices*, [1897], A. C. 556; 66 L. J. Q. B. 787; 61 J. P. 534; 46 W. R. 114. See the judgment of Lord Herschell.

⁴ And suggest that justices alone should contest appeals. But see *R. v. Purdey*, 5 B. & S., 909.

⁵ As to recognisances entered into too late or otherwise deficient, see *R. v. Glamorganshire Justices*, 24 Q. B. D. 675; 59 L. J. M. C. 150; 55 J. P. 39; 62 L. T. 730; 38 W. R. 640; 12 & 13 Vict. c. 45, § 8. As to Quarter Sessions exceeding their power to make rules of practice, and imposing illegal conditions as to time of entering the appeal, see *R. v. Pawlett*, L. R. 8 Q. B. 491; 37 J. P. 775. In computing the five days, Sunday must be counted; *ex parte Simpkin*, 2 E. & E. 392; 29 L. J. M. C. 23; 24 J. P. 262; 6 Jur. (N.S.) 144.

has entered into his recognisance to prosecute the appeal, the justice before whom he has done so, may summon any person whose evidence appears to him to be material, and require such person to be bound in recognisance to appear at the Quarter Sessions and give evidence on the appeal. Any person disobeying such summons may be apprehended on a warrant issued by the justice, and if he still refuses to enter into the recognisance, imprisoned until he does so, or is discharged in due course of law.¹

Evidence on Appeal.—On the hearing of the appeal the general practice is for the respondents to begin, as the onus is upon them to shew that the license or certificate ought not to be renewed.² The Quarter Sessions are not confined to the evidence given below, but may take into consideration any fresh evidence called by either party. Thus an applicant whose evidence of good character was not sufficient to satisfy the licensing justices may tender further evidence as to this on the appeal, and, if he does so, the Quarter Sessions ought to receive such evidence.³

The provisions requiring notice of the grounds of objection to the renewal of a license to be given to the applicant, do not apply to a hearing on appeal by the Quarter Sessions, the notice of the matters in contest already given on the hearing below being deemed to be sufficient.⁴

On an appeal the majority of the justices present will usually decide. But § 9 of the Alehouse Act, 1828, (requiring the decision of a majority of the justices on the grant of a license) has no application to Quarter Sessions: therefore where, the justices being equally divided, one justice withdrew in order that there might be a decision, the Court refused to interfere with the decision so arrived

¹ 9 Geo. IV. c. 61, § 28.

² Per Lord Bramwell in *Sharp v. Wakefield*, [1891] A. C. 173, p. 184.

³ *R. v. Pilgrim*, L. R. 6 Q. B. 89; 40 L. J. M. C. 3; 23 L. T. 410; 35 J. P. 167; 19 W. R. 99. See also Esher, M.R., in *Whiffen v. Malling*, [1892] 1 Q. B., at p. 368.

⁴ *Ex parte Gorman*, [1894] A. C. 24, p. 29. But the Quarter Sessions ought not to go into any grounds of objection not stated in the notice of objection given before the hearing by the licensing justices; *Russell v. Blackheath Justices*, 61 J. P. 696. See also Esher, M.R. in *Whiffen v. Malling*, *supra*.

at.¹ Where, however, the bench is equally divided, it would seem to be the better course for the justices to adjourn the case. But they are not bound to do so, and if they do not adjourn, the decision of the licensing justices below will stand and the appeal fail.¹

Where the justices below have refused a certificate on some ground which is not open to them as a ground of refusal, the Quarter Sessions are not necessarily bound to reverse their decision, but may re-hear the case, and refuse the application on any ground which would have been open to the justices below.²

If the Quarter Sessions decide to adjourn they must determine the appeal before the commencement of the next ensuing Quarter Sessions.³ It has been held that they may adjourn the appeal even where the adjournment is only for taxation of costs.⁴

Quarter Sessions may grant License.—If the justices in Quarter Sessions reverse the decision of the justices below they are empowered to grant or to transfer the license or certificate in question in the same manner as if such license or certificate had been granted at the general annual meeting, or transferred at the special session, as the case may be.⁵ The decision of the Quarter Sessions is final and conclusive on all questions of fact; and likewise on all questions of law, unless they consent to state a case for the opinion of the High Court.⁶

Costs of Appeal.—Upon the appeal the Court of Quarter Sessions may make such order therein, with or without costs, as to the Court shall seem meet.⁷

¹ *Ex parte Evans*, L. R. [1894] A. C. 16; 56 J. P. 488.

² *Whiffen v. Malling*, [1892] 1 Q. B. 362; 61 L. J. M. C. 82; 55 J. P. 424; 56 J. P. 325; 65 L. T. 413; 66 L. T. 333; 40 W. R. 293; *Ex parte Gorman*, [1894] A. C. 23; 63 L. J. M. C. 84; 56 J. P. 487; 58 J. P. 316; 70 L. T. 46.

³ 9 Geo. IV. c. 61, § 27. *Bowman v. Blyth*, 7 E. & B. 47; 26 L. J. M. C. 57; 22 J. P. 5. *Ex parte Evans*, *supra*.

⁴ *R. v. Belton*, 11 Q. B. 379; 12 J. P. 232; 17 L. J. M. C. 70; 12 Jur. 392. See also *Rawnsley v. Hutchinson*, L. R. 6 Q. B. 305; 40 L. J. M. C. 97; 35 J. P. 501; *R. v. Cambridge Union*, 1 B. & S. 61; 30 L. J. M. C. 137; 4 L. T. 212; 9 W. R. 599; *R. v. Mainwaring*, 47 L. J. M. C. 278; E. B. & E. 474.

⁵ 9 Geo. IV. c. 61, § 27.

⁶ *Ibid.*

⁷ *Ibid.*, 12 & 13 Vict. c. 45, § 5; *R. v. Padwick*, 27 L. J. M. C. 113.

If the appellant fails or abandons his appeal, the Court of Quarter Sessions must award the justices served with notice of the appeal such sum by way of costs as shall, in the opinion of such Court, be sufficient to indemnify such justices from all cost and charge to which they may have been put in consequence of the service of the notice.¹

If the appellant succeeds, licensing justices who have appeared and contested the appeal may be ordered to pay his costs, so far as they appear to the Quarter Sessions just and reasonable.² Costs ordered to be paid should be paid to the clerk of the peace who pays them over to the party entitled.³ Costs awarded and not paid may be recovered on a warrant of distress.⁴ Costs awarded to justices may be enforced by imprisonment.¹

In addition to their other powers over the costs of the appeal the Quarter Sessions may, where the appellant succeeds, if they think fit, order the treasurer of the county or place for which the licensing justices acted, to pay to such respondent justices such sum as the Quarter Sessions shall deem sufficient to indemnify them from all costs and charges to which they have been put by the appeal.⁵ The treasurer of the county or place includes any person acting in that capacity, or charged with the receipt and expenditure of moneys from and out of which the cost of public prosecutions have been usually defrayed.⁶ In the case of a borough having a separate commission of the peace the treasurer of the borough is the person upon whom the order to pay the justices' costs should be made.⁷ The Court of Quarter Sessions cannot order the opponent below who does not appear on the appeal to pay the appellant's costs.⁸

¹ 9 Geo. IV. c. 61, § 29. Lindley, L.J., in *R. v. London Justices*, at p. 629, see *infra*.

² 12 & 13 Vict. c. 45, § 5. 9 Geo. IV. c. 61, § 27; see *R. v. London Justices*, [1895] 1 Q. B. 616. See *R. v. Purdey*, 5 B. & S. 909.

³ 12 & 13 Vict. c. 45, § 5; 11 & 12 Vict. c. 43, § 27; *Gay v. Mathews*, 4 B. & S. 440; 33 L. J. M. C. 14; 27 J. P. 247; 8 L. T. 674; 14 W. R. 922; *R. v. Devonport Justices*, 33 J. P. 614; 20 L. T. 393; see also *R. v. Binney*, 22 L. J. M. C. 127; 1 E. & B. 810; 17 Jur. 854; *R. v. Ely Justices*, 5 E. & B. 484; 25 L. J. M. C. 1; 1 Jur. (N.S.) 1017. ⁴ 11 & 12 Vict. c. 43, § 27.

⁵ 9 Geo. IV. c. 61, § 27. ⁶ *Ibid.*, § 37. ⁷ 45 & 46 Vict. c. 50, § 246.

⁸ *Boulter v. Kent Justices*, [1897] A. C. 556; 66 L. J. Q. B. 787; 61 J. P. 532; 46 W. R. 114.

Case stated by Quarter Sessions.—The decision of the Quarter Sessions is final: but the Sessions may, if they are in doubt as to the law applicable to the case, state a case for the opinion of the High Court. The Quarter Sessions are the sole judges of whether the matters in question are of sufficient difficulty to make it desirable that they should state a case. If they decline to state a case they cannot be compelled to do so.¹ The case when stated is heard by a Divisional Court; from whose decision an appeal lies, but now only with leave.²

Appeal by Special Case.—Prior to the decision of the House of Lords, in *Boulter v. Kent Justices*,³ it had been held that an appeal lay from licensing justices by special case to the High Court direct, under the Summary Jurisdiction Act, 1879.⁴ It would seem, however, in view of the above decision, that this remedy is no longer open to an applicant whose license has been refused. The only person who can appeal by special case is a person aggrieved by a conviction, order, determination, or other proceeding of a court of summary jurisdiction, and licensing justices must now be held not to be such court.⁵

Case by Consent.—Under the Quarter Sessions Act, 1849 (Baines' Act), a special case may, however, still be stated by consent, on the order of a judge of the High Court, after notice of appeal has been given.⁶ The case should contain a statement that the parties have agreed that judgment shall be entered at Quarter Sessions in conformity with the decision of the Court.⁷ From the

¹ *R. v. Chantrell*, L. R. 10 Q. B. 587.

² 57 & 58 Vict. c. 16, § 2: see also, *Walsall v. London and North Western Railway*, 3 Q. B. D. 810; 4 App. Ca. 30; 38 L. J. M. C. 65; 39 L. T. (N.S.) 453; 27 W. R. 189. *R. v. Savin*, 6 Q. B. D. 309; 29 W. R. 639; *R. v. Illingworth*, 53 L. J. M. C. 60; 32 W. R. 451.

³ *Supra*.

⁴ 42 & 43 Vict. c. 49, § 33; *R. v. Partypool Justices*, [1892] 1 Q. B. 621; 61 L. J. M. C. 169; 56 J. P. 232; 66 L. T. 444; 40 W. R. 436. The procedure by special case is set out under appeals from convictions, *post*. Under 20 & 21 Vict. c. 43, a special case could only be obtained from a determination of justices on information or complaint.

⁵ So decided, *R. v. Bird*; see *Times*, March 28th, 1898.

⁶ 12 & 13 Vict. c. 45, § 11. See *post*, Appendix.

⁷ *Peterborough Corporation v. Thurlby*, L. R. 8 Q. B. D. 586.

determination of the High Court upon such case an appeal lies,¹ and leave is not required, as a case stated under this Act is excepted from the provisions of the Judicature Act, 1894.² On the hearing of such case the Court has a discretion as to costs.³

¹ *Peterborough (Mayor) v. Wilsthorpe*, 12 Q. B. D. 1; 48 J. P. 373; 53 L. J. M. C. 33; 50 L. T. (N.S.) 189; 32 W. R. 548; *Guardians of Holborn v. Guardians of Chertsey*, 15 Q. B. D. 76.

² 57 & 58 Vict. c. 16, § 2 (1).

³ *Clark v. Fisherton Angar*, L. R. 6 Q. B. D. 139; 29 W. R. 334; 50 L. J. M. C. 33; 45 J. P. 358.

SECTION X.

PROCEDURE BY MANDAMUS AND CERTIORARI.

A REMEDY also exists in certain cases by mandamus and certiorari. The principle upon which the Court will act in granting or refusing this relief was thus laid down by Smith, L.J., in *R. v. London Justices*,¹ "The rule is this—when an inferior Court hears and determines a matter within its jurisdiction, however erroneously it may decide either the law or the facts therein, no mandamus will go, the reason being that the Court of Queen's Bench has no prerogative to decide by way of appeal matters decided by an inferior Court within its jurisdiction. But where an inferior Court has declined jurisdiction the Court of Queen's Bench has a prerogative by way of mandamus to command the inferior Court to proceed to do its duty according to law; and when an inferior Court has usurped jurisdiction—that is, has exceeded its jurisdiction—certiorari or prohibition² is the appropriate remedy."

A writ of mandamus will also go to a person upon whom is cast the performance of some public or quasi public duty.³

Mandamus.—Where, therefore, the justices have erroneously refused to entertain an application for the grant, renewal, or transfer of a license, or where the Quarter

¹ [1895] 1 Q. B. 637; 64 L. J. M. C. 100; 59 J. P. 820; 72 L. T. 211.

² A Writ of Prohibition is a writ commanding an inferior tribunal to abstain from acting in a matter over which it has improperly assumed jurisdiction; see *Overseers of Everton*, L. R. 6 C. P. 245. It is hardly a practicable remedy in licensing matters, the proceedings in which will generally have been concluded before the writ can be obtained.

³ *R. v. Barker*, 3 Burr. 1267. But as to certiorari, see note 4, p. 66, *post*.

Sessions have improperly declined to hear an appeal, they may be compelled by a writ of mandamus to hear the case. In *R. v. Howard*,¹ where an applicant for renewal had not been served with notice of opposition, the justices without adjourning refused the application. On this the Court held that the justices, being bound under the circumstances to grant an adjournment, had not heard and determined the application, and that a mandamus should go to compel them to do so.

But a mandamus in such case will not direct the justices to renew the license—it will only require them to re-hear the case according to law.² The fact that the time limited by statute for holding an adjourned meeting has expired will not prevent a mandamus issuing.³ In another case, where the justices, having refused renewal to an applicant at the general annual meeting on account of his bad character, declined to entertain the application of another tenant at the adjournment, on the ground that the matter was by their first decision *res judicata*, a mandamus was granted to compel them to hear the second applicant. “The merits of the case,” said Blackburn, J., “are for the Sessions to decide, but they are bound to hear it.”⁴ So, too, where the justices refused an application upon the absence of a qualification which by law the applicant was not required to possess;⁵ and where, being limited to four grounds of refusal, they declined to state on which they had acted;⁶ also where in a like case they acted as if they had an unfettered discretion, and refused on grounds other than those permitted by law.⁷

¹ 23 Q. B. D. 502; 53 J. P. 454; 60 L. T. 960; 37 W. R. 617. See also *R. v. Farquhar*, L. R. 9 Q. B. 258; 32 J. P. 166.

² *Ibid.*, *R. v. Worcester*, 2 Strange, 881; *R. v. Young*, 1 Burr. 557.

³ *R. v. Rochester*, E. B. & E. 1024; 27 L. J. (N.S.) 434; *R. v. Miskin Higher Justices*, 50 J. P. 274; *R. v. Farquhar*, 9 Q. B. 258; 39 J. P. 166; cf. *R. v. Newcastle*, 51 J. P. 245.

⁴ *Drake's Case*, L. R. 5 Q. B. 33; 39 L. J. M. C. 17; 34 J. P. 4.

⁵ *R. v. De Reutzen*, 1 Q. B. D. 55; 45 L. J. M. C. 57; 33 L. T. 726; 40 J. P. 150; 24 W. R. 343.

⁶ *R. v. Sylkes*, 1 Q. B. D. 52; 45 L. J. M. C. 39; 40 J. P. 22; 33 L. T. 568; *R. v. Thomas*, [1892] 1 Q. B. 426; 61 L. J. M. C. 141; 56 J. P. 151; 66 L. T. 289; 40 W. R. 472.

⁷ *R. v. Scott*, 22 Q. B. D. 481; 58 L. J. M. C. 78; 53 J. P. 119; 60 L. T.

A mandamus will also go where justices have granted a license on some illegal condition, to compel them to determine the case according to law.¹

When the justices make their return to the writ of mandamus, the prosecutor may traverse such return, and raise the issue that in fact the justices did not hear the case, but only pretended to do so.²

It must be remembered that a mandamus is an extraordinary remedy, and the Court will not grant this writ where an equally satisfactory and effectual remedy lies by way of appeal to Quarter Sessions.³

Where a rule nisi for a mandamus is refused on the ground that the materials in support of it are not sufficient, a second application on further materials will not succeed. Such a writ being an extraordinary remedy, the persons seeking it may reasonably be required not to apply for it unless they have sufficient cause for doing so.⁴

Every application for a writ of mandamus to justices to enter continuances and hear an appeal shall be made within two calendar months after the first day of the Sessions at which the refusal to hear took place, unless further time be allowed by the Court or a judge, or unless special circumstances appear by affidavit to account for the delay to the satisfaction of the Court.⁵

It is not necessary to give notice to the justices before applying for a rule nisi for a mandamus. The application must be supported by evidence on affidavit shewing the obligation to do the act, the demand to do it, and the refusal. The application should be made to a Divisional Court taking *ex parte* motions on the Crown side. If urgent, it may be made in the vacation at chambers.⁶

231; 37 W. R. 301; *R. v. King*, 20 Q. B. D. 430; 57 L. J. M. C. 20; 52 J. P. 164; 58 L. T. 607; 36 W. R. 600.

¹ *R. v. Bowman*, 14 T. L. R. 303; W. N. (98) 29 (8).

² *R. v. Pirehill Justices*, 14 Q. B. D. 13; 54 L. J. M. C. 17; 51 L. T. 534; 49 J. P. 36; 33 W. R. 205.

³ *R. v. Thomas*, *supra*; *R. v. Smith*, L. R. 9 B. 146; 37 J. P. 214; 28 L. T. 129; 21 W. R. 382.

⁴ *R. v. Mayor of Bodmin*, [1892] 2 Q. B. 23; 56 J. P. 504; per Day, J.

⁵ Crown Office Rules, 1886, r. 79.

⁶ *Ibid.*, r. 60.

When a Divisional Court refuses a rule nisi for a mandamus, or discharges such rule on cause shewn, or makes such rule absolute, an appeal lies to the Court of Appeal and to the House of Lords.¹

Certiorari.—Certiorari lies to quash the proceedings of an inferior Court where such Court has usurped a jurisdiction which does not belong to it. A writ of certiorari has hitherto been granted to quash the decisions of licensing justices both in granting and refusing licenses. The Court will not grant it if no benefit can accrue from the writ.² Nor if the applicant has by his conduct disentitled himself from asking for this remedy.³

Where a licensing justice, who was a member of the county licensing committee acting on the confirmation of licenses, wrote to three of the licensing justices, telling them (with regard to an application then pending before them) that no new license was required in the district, and subsequently, after the license had been granted, attended as a member of the above committee and gave a decisive vote against confirmation, it was held that a writ of certiorari should go to bring up and quash this decision.⁴

In another case, where the transfer of a license had been refused at special sessions, it was shewn that this decision was arrived at by the decisive vote of a justice who was a member of an association which had instructed the solicitor who had appeared to oppose the application. Upon this, the Court granted certiorari to quash the order as the magistrate in question had in effect acted alike as prosecutor and judge.⁵

So too, where a Court of Quarter Sessions ordered an objector, who had not appeared on the appeal at Quarter Sessions, to pay a successful appellant's costs, it was held

¹ *Ex parte Evans*, [1894] A. C. 16; 56 J. P. 488; *R. v. Mayor of Bangor*, 18 Q. B. D. 349 (per Esher, M.R. 360); *Allcroft v. Bishop of London*, [1891] A. C. 666; *R. v. Glamorganshire Justices*, [1892] 1 Q. B. 621; *Barton v. Titmarsh*, 49 L. J. Q. B. 573.

² *R. v. Newburgh*, L. R. 4 Q. B. 585.

³ *R. v. South Holland*, 8 A. & E. 429.

⁴ *R. v. Ferguson*, 54 J. P. 101; but cf. *R. v. Rogers*, 56 J. P. 183.

⁵ *R. v. Fraser*, 57 J. P. 500. As to quashing a license, see *R. v. Hain*, 12 T. L. R. 323.

that a writ of certiorari should go to quash this order as made without jurisdiction.¹

Where the application for this writ is made by a person directly aggrieved, such person is entitled to the writ *ex debito justitiæ*; but where the applicant is merely one of the general public, the Court has a full discretion.² Where a new license has been granted, rival publicans and adjoining owners of property have been held not to be persons aggrieved within the meaning of this rule.³

How far the recent decision of the House of Lords in *Boulter v. Kent Justices*, that the annual licensing meeting is not a judicial body, nor its grants or refusals orders of a Court, may prevent a writ of certiorari issuing in future to quash the decisions of licensing justices, has not yet been decided.⁴

An application for a writ of certiorari must be made within six calendar months⁵ of the decision complained of, and six days' notice, in writing, of the intended application must be given to the justices, in order that they may shew cause against granting the writ if they so think fit. The six days are reckoned exclusive of the first and inclusive of the last day.⁶ The notice must be served on the justices personally or by leaving it at their residences.⁷ It is sufficient to serve two of the justices by and before whom the order was made.⁸ The application is heard by a Divisional Court, taking *ex parte* motions on the Crown side.⁹

¹ *Boulter v. Kent Justices*, [1897] A. C. 556; 66 L. J. Q. B. 787; 61 J. P. 532; 46 W. R. 114; see also *R. v. Thornton*, [1897] 2 Q. B. 308; 61 J. P. 470; 66 L. J. Q. B. 774; affirmed on appeal, 62 J. P. 68.

² *R. v. Surrey Justices*, L. R. 5 Q. B. 466.

³ *R. v. Surrey Justices*, 52 J. P. 423; *R. v. Taunton*, 3 M. & S. 465; *R. v. Middlesex Justices*, 3 B. & Ad. 938; see also *R. v. Rogers*, 56 J. P. 183.

⁴ See *Royal Aquarium v. Parkinson*, [1892] 1 Q. B. 431; *R. v. London County Council*, 71 L. T. 638; *R. v. Watermen's Company* [1897], 1 Q. B. 659; *R. v. Salford Overseers*, 18 Q. B. 687; 21 L. J. M. C. 223; 16 Jur. 907. Since the statement in the text was printed the Court has decided that certiorari will no longer lie to quash a license illegally granted at the annual meeting. *Re Sharman, ex parte Denton*, 14 T. L. R. 269. In such case mandamus is now the only remedy. *R. v. Bowman*, 14 T. L. R. 303; W. N. (98) 29 (8). It would seem, however, that certiorari will still lie to quash a license improperly renewed by Quarter Sessions on appeal.

⁵ Crown Office Rules, 1886, r. 33. This limitation as to time only applies in the case of justices.

⁶ *Ibid.*, r. 294.

⁷ *Ibid.*, r. 139.

⁸ *Ibid.*, r. 33.

⁹ *Ibid.*, r. 28.

SECTION XI.

REGISTER OF JUSTICES' LICENSES AND CERTIFICATES.

By whom kept.—In every licensing district a register called the “Register of Licenses” must be kept by the clerk of the licensing justices of the district. This register must be in such form as may be prescribed by the licensing justices. The justices may, if they think fit, cause the register to be divided into parts, and assign a part to any portion of the licensing district.¹

Where in any county petty sessional division or other place there are more persons than one filling the office of clerk of the licensing justices, the licensing justices shall determine by which of such persons the register of licenses shall be kept.²

Entries to be made in Register.—The register of licenses is required to contain a record of all the justices' licenses and certificates granted in the district, and the following particulars regarding each of them: (1) the premises in respect of which it is granted; (2) the name of the owner thereof; and (3) the name of the holder, for the time being, of the license or certificate.³

The owner of licensed premises is defined by the Licensing Act, 1872, to be “the person for the time being entitled to receive, either on his own account or as mortgagee, or other incumbrancer in possession the rack rent of such premises.”⁴ By the Licensing Act of 1874, “any person possessing an estate or interest in premises licensed

¹ L. A. 1872, § 36.² Ibid., § 74.³ Ibid., § 36.⁴ § 74.

for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: provided that when such estate or interest is vested in two or more persons jointly, one only of such persons shall be registered as representing such estate or interest."¹

Change of Ownership in Premises.—Where, owing to a sale of the premises, or otherwise, there is a change in the ownership the name of the new owner must be entered upon the register; and it is provided that a Court of summary jurisdiction may, on the application of any person who proves to the Court that he is entitled to be entered as owner of any premises in place of the person appearing on the register to be the owner, make an order substituting the name of the applicant, and such order shall be obeyed by the clerk of the licensing justices.² Should the person whose name is directed to be removed in favour of the applicant desire to appeal against the order, he may do so to the next Court of Quarter Sessions.³

Entries of Convictions and Disqualifications.—All forfeitures of licenses and certificates, disqualifications of premises, records of convictions⁴ (whether ordered to be recorded on the license or certificate or not), and other matters of the like kind must also be entered in the register.⁵ The second and every subsequent conviction recorded on the license or certificate of a licensed person shall also be recorded in the register of licenses against the premises.⁶ The object being to enable the licensing justices, and other persons who may be entitled to search the register, to see at a glance how far, if at all, any particular premises are prejudiced by delinquencies in their management.

¹ § 29.

² L. A. 1872, § 36.

³ Ibid., § 52.

⁴ As to convictions of a licensed person for bribery or treating being entered on the Register, see 46 & 47 Vict. c. 51, § 38; and *post*, p. 158.

⁵ L. A. 1872, §§ 36, 55.

⁶ L. A. 1872, § 31. This provision does not apply to a licensed person licensed in respect of the same premises on the 10th of August, 1872.

Special provision is also made for giving notice to owners of premises of any conviction for an offence a repetition of which would render the premises liable to disqualification, so that they may have the opportunity of getting rid of the tenant whose conduct has tainted the premises.¹ But it is from the state of the register that an intending purchaser must ascertain how far the value of a licensed house has been affected by its previous management, and future renewals of the license thereby imperilled.²

Inspection of the Register.—Any ratepayer, owner of licensed premises, or license holder within the licensing district is entitled, at any reasonable time, upon payment of a fee of one shilling, to inspect and take copies or extracts from the register of licenses. Any officer of police or of inland revenue within the licensing district has the like privilege, but is exempt from the payment of the above fee.

If the clerk of the licensing justices, or any other person, prevents the inspection of, or taking of copies or extracts from the register, or demands any unauthorised fee therefore, he renders himself liable to a penalty not exceeding £5 for each such offence.³

Entries in Register are Evidence.—By § 58 of the Licensing Act, 1872, the registers of licenses kept in pursuance of that Act are receivable in evidence of the matters required to be entered therein, and every copy of an entry made in a register of licenses in pursuance of that Act purporting to be signed by the clerk to the licensing justices, and (in case of a copy) to be certified to be a true copy, shall be evidence of the matters stated in such entry without proof of the signature or authority of the person signing the same.

A fee of one shilling is payable to the clerk to the justices on the registration of every license or certificate granted or renewed by the licensing justices at the general annual licensing meeting.³

¹ L. A. 1872, § 56.

² As to Excise Registers, see *post*, Section XXII.

³ L. A. 1872, § 36.

SECTION XII.

RETAIL SALES EXCEPTED FROM THE JUSTICES' JURISDICTION.

SECTION 72 of the Licensing Act, 1872, enumerates a series of exceptions from the operation of that Act, the words of exemption being "nothing in this Act shall affect or apply to" the specified exceptions. These exceptions are:—

1. **The Universities.**—The privileges at the date of the passing of this Act enjoyed by any University in England, or the respective chancellors or scholars of the same, or their successors. This exception relates to the Universities of Oxford and Cambridge, these being the only Universities in England which at the date mentioned enjoyed special privileges as to the sale of intoxicating liquors. As a similar exemption clause is enacted in the Alehouse Act, 1828, and the Wine and Beerhouse Act, 1869, the statutory requirement that the retailer of intoxicating liquor must first obtain a justices' license or certificate, has no effect where such requirement would infringe the ancient privileges of these two Universities. These privileges, which are referred to in a long series of statutes, relate to the sale of wine, both Universities having from an early date enjoyed under royal charters the right to license a limited¹ number of persons to keep wine taverns within their respective jurisdictions. At one time Cambridge University also claimed the right to license persons to keep alehouses,² but

¹ See 7 Ed. VI. c. 5, §§ 3, 4.

² *R. v. Archdall* 8 A. & E. 281; 3 N. & P. 696.

any such right was expressly taken away by 19 & 20 Vict. c. xviii. § 8.¹

2. **The Borough of St. Albans.**—The privileges at the date of the passing of this Act enjoyed by the mayor or burgesses of the borough of St. Albans in the county of Hertford, or their successors. These privileges also relate exclusively to the sale of wine. They are enjoyed under two royal charters, one of Elizabeth, and the other of James I., by which the mayor and burgesses were given the right of licensing three inhabitants to keep wine taverns, within the borough and two miles thereof. These licenses were authorised for the benefit of the grammar school at St. Albans, founded by Edward VI., to the support of which the duties payable in respect of them were directed to be paid. The privileges of St. Albans are also excepted from the operation of the Wine and Beerhouse Act, 1869, which required retailers of wine to obtain a justices' certificate.²

3. **The Vintners' Company.**—The exemption from the obligation to obtain a justices' license or certificate or to take out a license from the Commissioners of Inland Revenue enjoyed by the company of the master, wardens, and commonalty of Vintners of the city of London. This exception also relates to the sale of wine. By a charter of James I.³ the right of selling wine by retail at their dwelling-houses was conferred upon all who then were or thereafter should become free of the mystery of Vintners

¹ Under the charter of 11 Car. I., dated 30th August, 1635, the licenses to be granted to Vintners at Oxford by that University were licenses for life (see charter in Wood's "Annals," vol. ii., p. 400, edit. 1796). Under 10 Geo. II. c. 19, the licenses to Vintners to be granted by Cambridge University were annual licenses (see §§ 2, 3, 4). As to these privileges, see the following statutes: 7 Ed. VI., c. 5, §§ 3, 4; 12 Car. II. c. 25, § 7; 9 Ann. c. 23, § 52; 10 Geo. II. c. 19, §§ 2, 3, 4; 17 Geo. II. c. 40, § 11; 30 Geo. II. c. 19, § 9; 6 Geo. IV. c. 81; 9 Geo. IV. c. 61, § 36; 11 Geo. IV. and 1 Wm. IV. c. 64, § 29; 3 & 4 Vict. c. 61, § 22; 5 & 6 Vict. c. 44, § 6; 23 & 24 Vict. c. 27, § 45; 32 & 33 Vict. c. 27, § 20; 35 & 36 Vict. c. 94, § 72.

² As to these licenses, see 12 Car. II. c. 25, § 9; 9 Ann. c. 23, § 51; 30 Geo. II. c. 19, § 12; 23 & 24 Vict. c. 27, § 45; 32 & 33 Vict. c. 27, § 20. The charters of Elizabeth and James dated respectively 24th August, 1569–70, and 10th May, 1610, are given in Clutterbuck's "History of Hertfordshire," vol. i., p. 49.

³ 9 Jac. I., Pat. Roll. Pt. 34, No. 6. See *Inland Revenue v. Pope*, 52 J. P. 682.

in the city of London. Under this charter the privilege granted might be exercised ¹ (1) in the city of London and within three miles of the walls thereof; (2) in all other cities and seaport towns then known as "port towns;" and (3) in all other cities and towns called "thoroughfare towns" on the roads from Devon to London, and from London to Berwick.² In 1757 the privilege was restricted ³ to those who had obtained their freedom by patrimony or apprenticeship, and not by redemption; and in 1862 ⁴ the right to sell wine under this privilege was limited to one set of premises for each freeman, and entry was required to be made of such premises with the proper excise officer under 4 & 5 Wm. IV. c. 51, before any wine was there sold.

The term "Vintner" includes persons selling wine in any quantities, whether for consumption on or off the premises.⁵

As a justices' license is only of value to the grantee as enabling him to obtain an excise license, the exception enjoyed by the Vintners from the requirement of an excise license would in any case entitle them to sell wine by retail on their entered premises without any authority in that behalf from the justices. By § 41 of the Metropolitan Police Act, 1839,⁶ all privileged Vintners, claiming to sell foreign wine by retail for consumption on their premises within the metropolitan police district without license, are subject to all the provisions of all Acts made for the regulation of persons so licensed, except those provisions which refer to the taking out of a license either from any justice of the peace or from the commissioners of excise.

The foregoing privileges of the Universities, the borough of St. Albans, and the Vintners are expressly excepted from the operation of the Excise Licenses Act, 1825,⁷ and the Inland Revenue Act, 1880.⁸

¹ *Thomas v. Sorrell*, Vaughan, 330-359; Levinz, 217-221.

² Now limited to certain specific towns.

³ 30 Geo. II. c. 19, §§ 10, 11; see also 9 Geo. IV. c. 61, § 36.

⁴ 25 & 26 Vict. c. 22, § 16.

⁵ *Wells v. Attenborough*, 24 L. T. 312; 19 W. R. 465. As to the Vintners' privileges, see also 11 Geo. IV. and 1 Wm. IV. c. 64, § 29; 2 & 3 Vict. c. 61, § 22; 23 Vict. c. 27, § 45; 32 & 33 Vict. c. 27, § 20.

⁶ 2 & 3 Vict. c. 47.

⁷ 6 Geo. IV. c. 81, § 30.

⁸ 43 & 44 Vict. c. 20, § 48.

4. **Theatres.**—A fourth exception is the sale of intoxicating liquors by proprietors of theatres in pursuance of the Acts in that behalf. The sale of liquor in theatres under an excise license only is authorised by the Excise Act, 1835.¹ That Act also applied to other places of public entertainment, but this exception is now confined to theatres properly so called.² Where a theatrical license has been obtained from the proper authority in respect of any premises, an excise license authorising the sale of beer, spirits, and wine therein by the proprietor may be obtained practically as a matter of course.³

5. **Packet Boats.**—The sale of intoxicating liquor in packet boats in pursuance of the Acts in that behalf, is also excepted. Such sales are conducted under the authority of an excise license granted under § 10 of the Excise Act, 1834.⁴

The boats to which this exemption applies are “any packet, boat, or other vessel, employed for the carriage and conveyance of passengers from one part of the United Kingdom to another or other parts thereof;” and the sales of liquor upon such boats for which an excise license is a sufficient authority are sales by retail of foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco to the passengers on board such vessels to be consumed by them in and on board thereof during the voyage in which such passengers shall be then carried and conveyed.⁵

6. **Spruce or Black Beer.**—The sale of spruce or black beer is also excepted from the operation of the Licensing Acts, 1872 and 1874. Although a justices’ license or certificate is not required by a person retailing this beer an excise license is, if the beer contains more than two per cent. of proof spirit.⁶

¹ 5 & 6 Wm. IV. c. 39, § 7.

² *R. v. Commissioners of Inland Revenue*, 21 Q. B. D. 569; 57 L. J. M. C. 92; 52 J. P. 390; 59 L. T. 378; 36 W. R. 696.

³ As to these licenses, see *post*, Section XXII., p. 199.

⁴ 4 & 5 Wm. IV. c. 75.

⁵ 9 Geo. IV. c. 47, § 1. As to these licenses, see *post*, Section XXII.

⁶ 48 & 49 Vict. c. 51, § 4. As to customs duty, see 44 Vict. c. 12, § 3; 52 Vict. c. 7, § 3. See also 25 Vict. c. 22, § 9; and 43 & 44 Vict. c. 20, *post*.

7. **Medicated Spirits.**—The sale of medicated or methylated spirits or spirits made up in medicine and sold by medical practitioners or chemists and druggists.¹

8. **Special Occasions.**—The sale of intoxicating liquor on special occasions, in pursuance of the provisions in that behalf enacted. Although occasional licenses are granted by the excise authorities, and not by the justices, the consent of a justice of the peace is necessary; and now by § 20 of the Licensing Act, 1874, for so much of the Licensing Act, 1872, as relates to offences against public order (*i.e.* §§ 12 to 18 both inclusive, and the sections for giving effect to the same), a person taking out an occasional license is deemed to be a licensed person, and the place in which any intoxicating liquors are sold in pursuance of an occasional license is deemed to be licensed premises.²

9. **Wholesale Dealing.**—There is also excepted the sale of intoxicating liquor by wholesale; for this the authority of an excise license is sufficient, no justices' license being required. As the provisions of the Licensing Acts, 1872 and 1874, do not affect or apply to wholesale dealing, the closing provisions have no application to such sales.³

10. **Canteens.**—The sale of spirits in canteens in pursuance of any Act regulating the same. With reference to the sale of liquors in canteens, the Army Act, 1881, now provides that two justices may grant any license or certificate required by a person authorised to hold a canteen, without regard to the provisions as to time of year and notices governing justices' licenses.⁴

¹ Licenses to retail methylated spirits are granted by the Commissioners of Inland Revenue. No person may hold such a license who is licensed to retail beer, spirits, wine, or sweets for consumption on the premises. See, as to these spirits, 16 Geo. II. c. 8, § 12; 18 & 19 Vict. c. 38, § 2; 24 & 25 Vict. c. 91, §§ 1, 2; 30 & 31 Vict. c. 90, § 18; 43 & 44 Vict. c. 24, pt. ii.; 52 & 53 Vict. c. 42, §§ 26, 27, p. 490, *post*; 53 Vict. c. 8, § 31.

² As to these licenses, see *post*, Section XXII., pp. 197, 198.

³ *R. v. Jenkins*, 55 J. P. 824; 61 L. J. M. C. 57; 65 L. T. 857; 40 W. R. 318.

⁴ 44 & 45 Vict. c. 58, § 174.

PART II.

PROVISIONS AS TO THE CLOSING OF
LICENSED HOUSES.

SECTION XIII.

STATUTORY CLOSING HOURS.

THE following regulations as to closing hours apply to all premises¹ in which intoxicating liquors are sold by retail, whether sold under a justices' license or certificate, or under an excise license only.²

They have, however, no application to selling by wholesale.³

1. **Metropolitan District.** — Within the metropolitan district (*i.e.* the city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the London County Council,⁴ or within the area contained within a circle, the radius of which is four miles from Charing Cross) all such premises must be closed (1) on Saturday night from midnight until one o'clock in the afternoon on the following Sunday; (2) on Sunday afternoon

¹ As to the application of closing hours to theatres, see *post*, Section XXII.

² *Martin v. Barker*, 50 L. J. M. C. 109; 45 L. T. 214; 45 J. P. 749.

³ *R. v. Jenkins*, 61 L. J. M. C. 57; 55 J. P. 824; 65 L. T. 857; 40 W. R. 318; L. A. 1872, § 72; L. A. 1874, § 1.

⁴ In succession to the Metropolitan Board of Works: see 51 & 52 Vict. c. 42, § 40 (8); 18 & 19 Vict. c. 120, §§ 249, 250; 25 & 26 Vict. c. 102, § 42.

from three to six o'clock; (3) on Sunday night from eleven o'clock until five o'clock on the following morning; (4) on all other days from half an hour after midnight until five o'clock in the same morning.

2. Town or Populous Place.—Beyond the metropolitan district and in the metropolitan police district, or in a town or in a populous place as defined by the Licensing Act, 1874, all such premises must be closed (1) on Saturday night from eleven o'clock until half an hour after noon on the following Sunday; (2) on Sunday afternoon from half past two to six o'clock; (3) on Sunday night from ten o'clock until six on the following morning; (4) on the nights of all other days from eleven o'clock until six on the following morning.

"Town" means an urban sanitary district as described for the purposes of the Public Health Act, 1872; and any collection of houses adjacent to a town as so defined is, for the purpose of the provisions of the Licensing Act, 1874, as to the closing of premises, deemed to be part of such town after it has been declared so to be by an order of the county licensing committee having jurisdiction in the place where such houses are situated; provided that no urban sanitary district, whether including such adjacent houses or not, shall be deemed a town, unless it contains one thousand inhabitants.¹

"Populous place" means any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place.²

The population of any area for the purposes of the Act is to be ascertained according to the last published census for the time being.³

3. Other Districts.—Elsewhere than in the metropolitan district, or the metropolitan police district, or such town or populous place as aforesaid, all such premises must be closed: (1) on Saturday night from ten o'clock until half an hour after noon on the following Sunday; (2) on Sunday

¹ L. A. 1874, § 32.

² Ibid.

³ L. A. 1872, § 65.

afternoon from half-past two until six o'clock; (3) on Sunday night from ten o'clock until six on the following morning; (4) on the night of all other days from ten until six o'clock on the following morning.

In the Principality of Wales such premises must be closed during the whole of Sunday.¹

Special regulations apply to Christmas Day and Good Friday; on those days and on the days preceding them respectively all such premises in England and Wales must be closed wherever situate as they would require to be if Christmas Day and Good Friday were Sundays in England,² and this provision does not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.

There is no separate provision under the Licensing Acts as to Christmas Day and Good Friday in the case of a six-day license. It would therefore appear that upon those days the holder of a six-day license must keep his premises closed all day, for to him Sunday is a day of total prohibition. That this could have been intended by the legislature seems doubtful, but it is apparently the effect of the statute now in force.

Discretion of Justices in the Provinces.—In the case of premises situate beyond the metropolitan district the licensing justices have a discretion, for the purpose of accommodating the hours of closing on Sunday, Good Friday, and Christmas Day to the hours of public worship, to direct by order that such premises shall on Sunday, Good Friday, and Christmas Day remain closed until one o'clock in the afternoon, instead of half an hour after noon.³ Where the justices so order, the premises in question shall be closed in the afternoon from three o'clock (instead of from half-past two) until six o'clock. A justices' order to this effect shall not come into operation until the expiration

¹ 44 & 45 Vict. c. 61, § 1.

² The Sunday Closing (Wales) Act, 1881, has not had the effect of making it necessary to close in Wales on the whole of Christmas Day and Good Friday. See *Forsdike v. Colquhoun*, 11 Q. B. D. 71; 47 J. P. 392; 49, L. T. 136.

³ L. A. 1874, § 6.

of one month¹ after the date thereof, and shall be advertised in such manner as the licensing justices direct. The order remains in force until it is revoked.² The expenses of the advertisement may be defrayed in like manner as the expenses of advertising the sittings of the licensing justices are defrayed. Every refreshment house licensed for the sale therein of foreign wine upon the license of which a duty abatement has been obtained on the footing of its being a house not kept open after ten o'clock at night, must be closed every night at that hour.³

Refreshment houses, to which the Public House Closing Act⁴ still applies (*i.e.* refreshment houses in England and Wales not licensed for the sale of intoxicating liquors) must be closed from the same hour of the night or morning as premises licensed for the sale of intoxicating liquors by retail situate in the same place are required to be closed, until four o'clock in the morning.⁵

The consumption of intoxicating liquors during closing hours upon premises licensed as a refreshment house, but not for the sale of intoxicating liquor, is likewise prohibited, and any person who, being the keeper of such refreshment house, allows any intoxicating liquor to be consumed on the premises within such prohibited hours is liable for the first offence to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.⁶

Closing Premises in Case of Riot.—The justices are empowered in cases of actual or anticipated riot or tumult to order every licensed person in the neighbourhood to close his premises.⁷ Where justices so order they must specify the time during which the premises are to be closed. The order if necessary may be carried out by

¹ Calendar month. 52 & 53 Vict. c. 63, § 3.

² L. A. 1874, § 6.

³ L. A. 1872, § 28; 24 & 25 Vict. c. 91, § 9.

⁴ 27 & 28 Vict. c. 64.

⁵ L. A. 1874, § 11; *i.e.* closed under the Licensing Acts. The Sunday Closing (Wales) Act, 1881, has no application to refreshment houses in which intoxicating liquors are not sold. *Berni v. Thorney*, 64 L. J. M. C. 271; 43 W. R. 411; 72 L. T. 630.

⁶ L. A. 1872, § 27, see *post*, p. 136.

⁷ *Ibid.*, § 23.

force. Any person keeping his premises open for the sale of intoxicating liquors in contravention of such order is liable to a penalty not exceeding £50.¹

“Licensed person” within the meaning of this provision includes all persons licensed by the justices in pursuance of the Alehouse Act, 1828, also all persons holding certificates of justices under the Wine and Beerhouse Acts, or licenses for the sale of sweets granted in the same manner as if sweets were wine, and all wholesale spirit dealers holding licenses from the justices for the retail of spirits in pursuance of the Licensing Act, 1872.²

An order closing premises in case of riot may be made by any two justices of the peace acting for the county or place where the riot happens or is expected.¹

Six-day Licenses.—An applicant for a license or certificate to sell intoxicating liquor by retail for consumption on his premises may request the licensing justices to insert a condition that he shall keep his premises closed during the whole of Sunday, and upon such request the justices must insert such condition. This request may be preferred by an applicant at the general annual licensing meeting either on a new grant or on a renewal; it may likewise be made on a transfer at special sessions.³ A license granted, renewed, or transferred with this condition is a six-day license, and can only be renewed or transferred subsequently in that restricted form.⁴

The holder of a six-day license must keep his premises closed during the whole of Sunday,³ and may not sell any intoxicating liquor on that day to any person not lodging in his house.⁵

The holder of a six-day license may obtain from the Commissioners of Inland Revenue any license granted by such commissioners, which he is entitled to obtain in pursuance of such six-day license, upon payment of six

¹ L. A. 1872, § 23.

² Ibid., § 74.

³ Ibid., § 49.

⁴ Ibid.; *R. v. Creukerne Justices*, 21 Q. B. D. 85; 57 L. J. M. C. 127; 52 J. P. 372; 60 L. T. 84; 36 W. R. 629; *R. v. Liverpool Justices*, 52 J. P. 376.

⁵ L. A. 1874, § 10.

seventh parts of the duty which would otherwise be payable by him for a similar license not limited to six days; and if he sells any intoxicating liquor on Sunday he is deemed to be selling intoxicating liquor without a license.¹

The notice which a licensed person is required to keep painted or fixed on his premises shall, in the case of a six-day license, contain words indicating that such license is for six days only.¹

Early Closing Licenses.—A license or certificate for consumption on the premises may contain a condition that the premises in respect of which it is granted shall be closed one hour earlier at night than would otherwise be necessary. This condition also can only be inserted by the justices at the request of the applicant: when inserted in a license such license is an “early closing license.” This condition can only be inserted at the general annual licensing meeting on an application for a new grant, a removal order, or a renewal.²

The holder of a justices’ early closing license or certificate is entitled to a reduction of one-seventh of the duty payable upon any excise license taken out by him under such early closing license. The notice fixed upon his premises must indicate, by such words as the licensing justices may order, that an early closing license has been granted in respect thereof.³

An early closing license or certificate can only be renewed as such.⁴

A license may be granted both as a six day and an early closing license, in which case two-sevenths of the duty is remitted.⁵

¹ L. A. 1872, § 49. In calculating the amount to be paid for a six-day license any fraction of a penny shall be disregarded.

² L. A. 1874, § 7.

³ Ibid. Here, also, in calculating the duty fractions of a penny are to be disregarded.

⁴ *R. v. Crewkerne Justices, supra.*

⁵ L. A. 1874, § 8.

SECTION XIV.

EXEMPTIONS FROM THE PROVISIONS AS TO CLOSING HOURS.

Exemptions as to Premises—(1) Exemption Orders.—The local authority of any licensing district may, upon the production of evidence that, for the accommodation of any considerable number of persons attending any public market or following any lawful trade or calling, it is desirable so to do, grant to any licensed victualler or licensed keeper of a refreshment house, or any person licensed to sell beer or cider by retail to be consumed upon the premises, an order exempting such person (on the days and during the times specified in such order) from the provisions of the Licensing Acts with respect to the closing of his premises except between the hours of one and two in the morning. The premises in respect of which the exemption order is sought must be in the immediate neighbourhood of the market, or place where the trade or calling is pursued; and as to the sufficiency of the evidence upon which the application is based the local authority is sole judge.¹

The local authority however may not grant an exemption order in respect of premises in the neighbourhood of a theatre for the accommodation of persons attending such theatre.²

The holder of such an order has a complete immunity from all penalties for not closing his premises on such days and during such time as may be specified in his order, but remains liable to all other penalties.¹

A notice, in the form prescribed by the local authority,

¹ L. A. 1872, § 26; L. A. 1874, § 5.

² L. A. 1874, § 4.

must be affixed in a conspicuous place outside the premises covered by the exemption order, stating the days and hours during which the premises are permitted to be open. During the whole period covered by the exemption this notice must be kept up. Failure to affix and maintain the required notice or to maintain it so affixed during any part of the time for which the order is granted exposes the holder of the order to a penalty not exceeding £5.¹ It is also an offence for any person who does not hold an exemption order, to keep an exemption notice affixed to his premises. Any such person so doing is liable to a penalty not exceeding £10.²

An exemption order may at any time be extended, restricted, or withdrawn by the authority granting it, "so however, as not to render any person liable to any penalty for anything done under such order before the holder was informed of such withdrawal or alteration."³

(2) Occasional Exemption Licenses.—The local authority of a licensing district may also grant, upon application, by any licensed victualler, or keeper of a refreshment house in which intoxicating liquors are sold, or by any person licensed to sell beer or cider by retail to be consumed on the premises, an occasional license exempting such person from the closing provisions of the Licensing Acts during the hours and on the special occasion or occasions specified in such license.⁴

The granting of this occasional license is entirely in the discretion of the local authority. What is a special occasion, justifying the grant of such a license, is in each case a question of fact. Of this the local authority is the judge. Some special circumstance ought to mark the occasion; justices ought not to treat any event as a special occasion.

Where Christmas and New Year's Day were treated by the local authority as constituting special occasions, the Court refused to interfere.⁵

¹ L. A. 1872, § 26.

² Ibid.

³ Ibid.

⁴ Ibid., § 29; L. A. 1874, § 5.

⁵ *Devine v. Keeling*, 50 J. P. 551; 34 W. R. 718; see also *Stevens v. Emson*, 45 L. J. M. C. 63; 1 Ex. D. 100; 40 J. P. 484; 33 L. T. 821.

While an occasional exemption license exempts the holder from the closing provisions of the Licensing Acts, it does not exempt him from any penalty to which he may be subject by any other provisions of those or any other Acts.¹

The holder of an exemption order, or of an occasional exemption license, must, on demand by a justice of the peace, constable, or officer of inland revenue, produce such order or license within a reasonable time for examination, under pain of a penalty not exceeding £10.²

Local Authority.—The following are the local authorities of licensing districts for the purposes of the Licensing Acts:—

(1) In the Metropolitan Police district, the Commissioner of Police for the Metropolis, subject to the approbation of one of her Majesty's principal Secretaries of State.

(2) In the City of London and the liberties thereof, so far as they are not included in the Metropolitan Police district, the Commissioner of City Police, subject to the approbation of the Lord Mayor of the said City.

(3) In any other place, two justices of the peace in sessions assembled.³

Exemptions as to Persons—(1) *Bonâ fide Travellers.*—From the general prohibition against retailing intoxicating liquor in closing hours certain exceptions as to consumers are also recognised by statute.

By § 10 of the Licensing Act, 1874, it is provided that "Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bonâ fide* travellers or to persons lodging in his house."

It is further provided by the same section that no person shall be deemed a *bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands

¹ L. A. 1872, § 29.

² Ibid, § 64.

³ Ibid., § 26.

to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare.

It will be noticed that the above definition of a *bonâ fide* traveller is negative in form, and does not imply that every person who has come a distance of three miles is such traveller, but that no one who has come a less distance can be so. In deciding whether or not any given person is a *bonâ fide* traveller the Courts have always looked to the object which such person had in view as the essential test to be considered. Prior to the Licensing Act, 1874, no hard and fast rule as to distance had been laid down by the Courts. Judges had, in fact, on several occasions expressly refrained from specifying any particular distance, on the ground that what would be a short distance for one man might be a very long distance for another, and what would be a long distance for a pedestrian might be a very trifling one to a person travelling in his carriage.¹ Now, however, under the Licensing Acts, no one can be a *bonâ fide* traveller who has not come a distance of at least three miles from the place where he lodged during the preceding night.

As regards the object of the traveller, which is the true test of his *bonâ fides*, it has long been settled that it may be either business or pleasure. In *Taylor v. Humphries*,² Erle, C.J., said that any person may be a traveller within the exception if he goes abroad, either from a desire to enjoy the country, or from any motive of business or pleasure, other than excessive drinking. A similar view was expressed by Willes, J., in *Copley v. Burton*,³ who said that a traveller was one travelling either for business or pleasure; but that a man who made a pretence of being a traveller, for the mere purpose of indulging his desire for drink, violated the law, and incurred the penalty. In the recent case of *Penn v. Alexander*,⁴ Collins, J., thus summed up the law on this subject: "The question whether or not

¹ Per Erle, C.J., in *Taylor v. Humphries*, 17 C. B. (N.S.) 539; 11 L. T. (N.S.) 376; 13 W. R. 136; 28 J. P. 793; 34 L. J. M. C. 1. See also Cockburn, C.J., in *Atkinson v. Sellers*, 5 C. B. (N.S.) 442; 28 L. J. M. C. 12; 23 J. P. 71.

² *Supra*.

³ L. R. 5 C. P. 489; 39 L. J. M. C. 141; 22 L. T. 888.

⁴ [1893] 1 Q. B. 522; 57 J. P. 118; 68 L. T. 355.

a man is a *bonâ fide* traveller must be one of fact, depending upon the circumstances of each particular case. It is not sufficient to prove that a man has travelled three miles in order to establish that he is a *bonâ fide* traveller; the language of the Act of Parliament is too clear to allow of such a contention being successful. What, then, is it which is to determine travelling three miles makes a man a *bonâ fide* traveller? It must be, in my opinion, the purpose with which he undertook the journey . . . If that object is pleasure or business a man will be a *bonâ fide* traveller; but if the form of pleasure is to drink beer, he will not be, for the beer, and not the travelling, would be the object of his journey." In *Peplow v. Richardson*¹ the object was to obtain a drink of mineral water, and this was held sufficient.

In *Cowap v. Atherton*² a railway servant left his home (where he had slept the night before) for his work on the railway. His duty there required him to attend to passing trains. In the interval between two trains he walked to a neighbouring public-house (which was more than three miles distant from his home) and had some beer. The landlord having been convicted for supplying the beer in prohibited hours, it was held, on appeal, that the customer was a *bonâ fide* traveller, and that no offence had been committed.

The period of time spent by the traveller in the house where he seeks refreshment may properly be considered in judging of his *bona fides*. In *Gallimore v. Goodall*³ the time spent in the licensed house was two hours and a half, and the Court held that this negated the *bona fides* of the traveller and justified a conviction.

A person who has travelled the necessary distance and is a *bonâ fide* traveller is not restricted to the use of one house of refreshment. Once a *bonâ fide* traveller he remains such until his return home, and it is not for

¹ L. R. 4 C. P. 168; 33 J. P. 407; 17 W. R. 410.

² [1893] 1 Q. B. 49; 57 J. P. 8; 68 L. T. 88; 41 W. R. 158.

³ 38 J. P. 597.

the magistrates to enquire whether the visit to a subsequent house springs from a *bonâ fide* thirst.¹

In a recent case in the Scottish Courts the question was argued whether it was an offence to supply a *bonâ fide* traveller with liquor in prohibited hours where such liquor was ordered for the purpose of treating friends who were not themselves *bonâ fide* travellers, and the Court of Session held that if done *bonâ fide* it was no offence, for a traveller, like a lodger, was entitled to treat his friends if he desired to do so.² But the sale must be of liquor to be consumed on the premises. The section does not sanction sales in closing hours to *bonâ fide* travellers for consumption off the premises by themselves and other persons.³

When a licensed person is charged under the Licensing Acts with selling in closing hours to a person whom he believed to be a *bonâ fide* traveller, and fails to prove that such person was in fact a *bonâ fide* traveller, he is still entitled to have the case against him dismissed, if he can satisfy the justices that he truly believed that the purchaser was a *bonâ fide* traveller and had taken all reasonable precautions to ascertain whether or not that was so.⁴

Prior to the Licensing Act, 1874, it was doubtful whether a *bonâ fide* but mistaken belief that the purchaser was a traveller could be raised as a defence by the publican, but now, where the licensee has taken reasonable precautions to inform himself as to the matter, it is a complete defence.⁵

The three-mile distance which a *bonâ fide* traveller must have come, is to be calculated by the nearest public thoroughfare. This includes a water as well as a land

¹ *Sheasby v. Oldham*, 60 L. J. M. C. 81; 55 J. P. 215; *Dames v. Bond*, 55 J. P. 503.

² *Oliver v. Loudon*, 60 J. P. 249.

³ *Mountfield v. Ward*, [1897] 1 Q. B. 326; 61 J. P. 217; 45 W. R. 288; 66 L. J. Q. B. 246; 76 L. T. 202.

⁴ L. A. 1874, § 10.

⁵ *Roberts v. Humphreys*, 42 L. J. M. C. 147; L. R. 8 Q. B. 483; 38 J. P. 135; 29 L. T. 387; 21 W. R. 885; L. A. 1874, § 10.

thoroughfare. In *Coulbert v. Troke*¹ a licensed person had premises on the shore of Southampton Water, opposite Southampton. The distance across by water was one mile, by land the nearest road was eight miles. It was proved that the licensee sold drink at his premises in prohibited hours to persons coming across from Southampton in their own boats. Upon this it was held that such persons were not *bonâ fide* travellers, as they had not come a distance of three miles measured by water, which was, under the circumstances, the nearest public thoroughfare.

(2) **Lodgers.**—Persons lodging in a licensed house are also entitled to be served with drink in closing hours, and the landlord is protected in selling to them. A lodger is entitled to entertain his private friends who come to see him at the licensed premises, and may order drink for this purpose. In *Pine v. Barnes*² an innkeeper sold and supplied to a *bonâ fide* lodger in his house intoxicating liquors, which were consumed by the lodger and guests who had dined with him in a private room on the licensed premises during a time when the premises were required to be closed. The magistrates convicted the innkeeper but stated a case for the opinion of the Court. The Court held that the conviction could not be supported. Hawkins, J., said, "By § 10, nothing in the Acts shall preclude a publican selling intoxicating liquors at any time to persons lodging in his house, and I find nothing to prevent a lodger, who has lawfully bought the liquor, from allowing his *bonâ fide* guests to drink it. If such liquors are honestly bought by a *bonâ fide* lodger for himself, and he entertains his friends with the liquor which he had a right to buy and the publican had a right to sell to him, I fail to see how the publican can be liable under the Act. I think the conviction was wrong. I agree that the justices should closely scrutinise the cases

¹ 1 Q. B. D. 1; 45 L. J. M. C. 7; 40 J. P. 533; 33 L. T. 340; 24 W. R. 41.

² 20 Q. B. D. 221; 57 L. J. M. C. 28; 52 J. P. 199; 58 L. T. 520; 36 W. R. 473.

before them, because unless they do so the Act might be evaded. But if on scrutinizing the evidence, as they seem to have done in the present case, they come to the conclusion that the case is *bonâ fide*, and that the publican honestly sells and the lodger honestly buys liquor after closing hours, and it is consumed by the *bonâ fide* guests of the lodger, I see no reason why the justices should not find those facts and refuse to convict.”¹

(3) **Travellers by Railroad.**—The closing hours provisions in the Licensing Act, 1874, do not preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad.²

Travellers by railroad are therefore not subject to the three-mile limitation. Formerly they enjoyed the same exemption as other travellers, and sales to them were treated on that footing.³

(4) **Private Friends.**—No person keeping a house licensed under the Licensing Acts, 1872 and 1874, is liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends *bonâ fide* entertained by him at his own expense.⁴

This protection only extends to the case of friends entertained *bonâ fide*. The intention is to prevent a licensed person from being under a disability as to seeing and entertaining his friends which would not attach to him were he unlicensed.

But if the use made of the immunity is associated

¹ Although a lodger may purchase drink for himself and his friends after closing hours, he may not play billiards on the licensed premises on a public billiard table after closing hours. Commenting on this in *Ovenden v. Raymond*, the Court said it was “a *casus omissus* and a great anomaly.” See 40 J. P. 727; 34 L. T. 698.

² L. A. 1874, § 10. See a similar provision in the Public House Closing Act, 1864, 27 & 28 Vict. c. 64, § 10 (applied to all England by L. A. 1874, § 11) and in The Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), § 4.

³ *Copley v. Burton*, L. R. 5 C. P. 489; 39 L. J. M. C. 141; 22 L. T. 888; *Fisher v. Howard*, 34 L. J. M. C. 42; 29 J. P. 246; 11 L. T. 373; 13 W. R. 145.

⁴ L. A. 1874, § 30. As to the former law on this subject which this section re-enacts, see *Overton v. Hunter*, 23 J. P. 808; 1 L. T. 360; *Petherick v. Sargent*, 26 J. P. 135; 6 L. T. 48.

rather with the position of the host as a licensed person than as a private individual, the *bona fides* will apparently be defeated. As where the license holder kept in his house after closing hours as his private friends persons previously there as the guests of a customer.¹

¹ *Corbett v. Haigh*, 5 C. P. D. 50; 44 J. P. 39; 42 L. T. 185; 28 W. R. 430.

PART III.

OFFENCES ARISING OUT OF THE SALE
OF INTOXICATING LIQUORS.¹

SECTION XV.

ILLICIT SALES.

1. Selling Intoxicating Liquor without License.—*No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorised by his license to sell the same.*

Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed to sell by retail, or selling or exposing for sale any intoxicating liquor, at any place where he is not authorised by his license to sell the same, shall be subject to the following penalties ; that is to say,—

- (1) *For the first offence he shall be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month :*
- (2) *For the second offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for a*

¹ In the case of the principal offences the words of the statute creating the offence are printed for distinctness in italics. All offences under the Licensing Acts, 1872 and 1874, are prosecuted before a Court of summary jurisdiction. See *post*, Sections XX. and XXI. As to the offence of selling intoxicating liquors in the North Sea, to persons on sea fishing boats, see 56 & 57 Vict. c. 17, *post*, p. 492.

term not exceeding three months, and he may by order of the Court by which he is tried, be disqualified for any term not exceeding five years from holding any license for the sale of intoxicating liquors :

- (3) *For the third and any subsequent offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any term not exceeding six months, and may, by order of the Court by which he is tried be disqualified for any term of years or for ever from holding any license for the sale of intoxicating liquors :*

In addition to any other penalty imposed by this section any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a license, forfeit such license, and in the case of a conviction for any offence under this section, the Court may, if it think expedient so to do, declare all intoxicating liquor found in the possession of any such person as last aforesaid, and the vessels containing such liquor, to be forfeited.

No penalty shall be incurred under this section by the heirs, executors, administrators, or assigns of any licensed person who dies before the expiration of his license, or by the trustee of any licensed person who is adjudged a bankrupt, or whose affairs are liquidated by arrangement before the expiration of his license in respect of the sale or exposure for sale of any intoxicating liquor, so that such sale or exposure for sale be made on the premises specified in such license, and take place prior to the special session then next ensuing, or (if such special session be holden within fourteen days next after the death of the said person or the appointment of a trustee in the case of his bankruptcy, or the liquidation of his affairs by arrangement) take place prior to the special session holden next after such special session as last aforesaid.¹

This section makes it an offence for any person to sell

¹ L. A. 1872, § 3.

or expose for sale by retail any intoxicating liquor either (1) without being licensed so to do or (2) at any place where his license does not authorise him to sell such liquor. There is no definition in the Licensing Act, 1872, of the words "duly licensed," but "licensed person" under that Act means a person holding a justices' license or certificate. The Act must, moreover, be construed subject to the statutory exceptions already mentioned entitling certain persons to retail intoxicating liquors without a justices' license or certificate.¹

But the son of an old soldier, entitled to the privileges of 56 Geo. III. c. 67, who retails intoxicating liquors is not exempted from taking out a justices' license for that purpose.²

Any transaction in the nature of a sale, whether money actually passes or not, is a sale within the meaning of this section.³ The sale must, however, be retail.

The Licensing Acts, 1872 and 1874, do not apply to sales of intoxicating liquors by wholesale.⁴ A retail sale is, in the case of wine⁵ and spirits,⁶ any sale of a less quantity than two gallons or one dozen reputed quart bottles; in the case of beer, porter, cider, and perry, any less quantity than four and a half gallons;⁷ and in the case of sweets or made wines, mead or metheglin, any sale of a quantity less than two gallons or one dozen reputed quarts.⁸ The circumstance that a sale is made in pint or half-pint bottles will not make the transaction a retail one, if the total quantity sold at one time is wholesale in amount.⁹

¹ See *ante*, p. 2. A grocer who has taken out a wine dealer's license is a wine merchant within the meaning of § 73 of the L. A. 1872. *Palmer v. Thatcher*, 3 Q. B. D. 346; 47 L. J. M. C. 54; 42 J. P. 213; 37 L. T. N. S. 784; 26 W. R. 314; *Josselyn v. Parsons*, 7 Ex. 127; 41 L. T. Ex. 60; 36 J. P. 455; 25 L. T. 912; 30 W. R. 316.

² *Killin v. Swatton*, 61 J. P. 150; 76 L. T. 55; 45 W. R. 235; 18 Cox C. C. 277.

³ L. A. 1872, § 62.

⁴ *Ibid.*, § 72 (9).

⁵ 23 & 24 Vict. c. 27, § 4.

⁶ 43 & 44 Vict. c. 24, § 104.

⁷ 11 Geo. IV. & 1 Wm. IV. c. 64, § 32; 4 & 5 Wm. IV. c. 85, §§ 12, 19; L. A. 1872, § 74; *R. v. Jenkins*, 55 J. P. 825.

⁸ 11 & 12 Vict. c. 121, § 9; 23 & 24 Vict. c. 113, § 7.

⁹ *Fairelough v. Roberts*, 24 Q. B. D. 350; 59 L. J. M. C. 54; 54 J. P. 421 62 L. T. 700; 38 W. R. 330.

"Intoxicating liquors" include spirits, wine, beer, porter, cider, perry, sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a license from the Commissioners of Inland Revenue.¹

Selling without a License.—Where a person is charged with selling without a license, it is sufficient for the prosecution to prove the sale; the onus of proving that he is duly licensed is then upon the defendant.²

The supply of liquor in a *bonâ fide* club to members for payment is not a selling by retail within the meaning of this section. In such case the liquor sold is the property of all the members, and a license is not required to authorise its distribution amongst them, whether for consumption on or off the premises.³ But it is otherwise if the club is not *bonâ fide*.⁴ And where the club was owned by a company who managed it and supplied what liquor they thought fit for the consumption of the members, it was held that the members had no proprietary interest in such liquor, and that this was a selling in contravention of the section.⁵ So, too, a sale of liquor in a *bonâ fide* club, through a member, to a stranger who pays for such liquor is within the Act.⁶ And where the sale was to the wife of a member, who said she was authorised by him to come and get the drink, this was held an offence.⁷ But where the steward of a club sold intoxicating liquor to a person who was not a member, in disobedience to the express *bonâ fide* orders of the committee, it was held that the members of the committee could not be convicted under the Excise Acts of selling by retail without a license,

¹ L. A. 1872, § 74. See as to beer, *Howorth v. Minns*, 51 J. P. 7; 56 L. T. 316.

² See *Turner v. Johnston*, 51 J. P. 22; 42 & 43 Vict. c. 49, § 39.

³ *Graff v. Evans*, 8 Q. B. D. 373; 51 L. J. M. C. 25; 46 J. P. 262; 44 L. T. 347; *Ranken v. Hunt*, 10 R. 249.

⁴ *Evans v. Hemingway*, 52 J. P. 134. See also *Newell v. Hemingway*, 58 L. J. M. C. 46; 53 J. P. 324; *Lynam v. O'Reilly*, [1898] 2 Ir. R. 48.

⁵ *Bonyer v. Percy Supper Club*, [1893] 2 Q. B. 154; 57 J. P. 470; 69 L. T. 447; 42 W. R. 29.

⁶ *Stevens v. Wood*, 54 J. P. 742; *Owen v. Langford*, 55 J. P. 484.

⁷ *Woodley v. Simmonds*, 60 J. P. 151; 12 T. L. R. 196.

although the money received by the steward was paid to the account of the club.¹

It has been held that a husband not licensed to sell intoxicating liquor cannot be convicted under this section on account of sales effected on his premises by his wife when there is no evidence bringing home to him knowledge of what has been done.² But, in another case, a license holder whose husband carried liquor from the licensed house to other premises to be there raffled for, and brought back the money, was held to be properly convicted of selling at such unlicensed premises, in the absence of any explanation by her, although there was no direct evidence of knowledge on her part of what was being done.³

A license affords no protection to a seller where, from some disqualification in the holder, or want of jurisdiction in the authority by whom it was granted, the license is in fact void. Thus, a license granted to a person who has been convicted of felony is void;⁴ but a free pardon will purge the offence and terminate the disqualification.⁵ So also a beerhouse license granted to a person who is not the real resident holder and occupier of such house is absolutely null and void;⁶ and, in like manner, a license taken out in the name of a dead man by his executors, with the object of preserving a public-house for sale as a going concern is void.⁷ Where justices granted a beer certificate under an enactment which had been repealed, and the holder sold liquor under an excise license obtained upon such certificate, the Court held that he was guilty of selling without a license.⁸ But in the case of an occasional license obtained

¹ *Newman v. Jones*, L. R. 17 Q. B. D. 132; 55 L. J. M. C. 113; 50 J. P. 873; 55 L. T. 327.

² *Allen v. Lumb*, 57 J. P. 377.

³ *Seager v. White*, 51 L. T. 261; 48 J. P. 436.

⁴ *R. v. Vine*, L. R. 10 Q. B. 195; 44 L. J. M. C. 60; 39 J. P. 213; 31 L. T. 842; 22 W. R. 649.

⁵ *Hay v. Tower of London*, 24 Q. B. D. 561; 59 L. J. M. C. 79; 62 L. T. 290; 54 J. P. 500; 36 W. R. 258.

⁶ 3 & 4 Vict. c. 61, § 1.

⁷ *Cowles v. Gale*, L. R. 7 Ch. 12; 41 L. J. Ch. 14; 25 L. T. 524; 20 W. R. 79.

⁸ *Pearson v. Broadbent*, 36 J. P. 485.

from the excise authorities upon the written consent of a magistrate who, in fact, had no jurisdiction to give such consent, it was held that the license, although irregular, was not void, and gave a sufficient protection to the holder against a conviction for selling without a license.¹ So likewise a license for the sale of beer by retail which had been obtained without the applicant producing to the grantor (as then required by statute) a certificate from the overseer of the parish that he was the real resident holder and occupier of the house was held not to be void, the supervisor of excise being otherwise satisfied of the fact.²

Any justices' license for the sale of intoxicating liquors to be drunk on the premises is utterly void for all purposes unless granted at the time and place prescribed by statute.³

Selling beyond Licensed Premises.—A license only authorises the holder to sell upon the premises named therein. Therefore any sale elsewhere than on the licensed premises is in effect an unlicensed sale, and brings the seller within the penalties of this section.⁴

Formerly an exception existed in favour of sales at fairs, but now, by § 18 of the Licensing Act, 1874, such sales are only permissible under the authority of an occasional license, and any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races, without an occasional license authorising such sale, shall, notwithstanding anything contained in any Act of Parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorised by his license to sell the same, and be punishable accordingly. But this provision does not apply to a person selling or exposing for sale intoxicating liquors in premises in which he is duly

¹ *Stevens v. Empson*, L. R. 1 Ex. 100; 45 L. J. M. C. 63; 40 J. P. 484; 33 L. T. 821.

² *Thomson v. Harvey*, 28 L. J. M. C. 163; 23 J. P. 150; 4 H. & N. 254.

³ 9 Geo. IV., c. 61, § 13.

⁴ See forms, Appendix.

authorised to sell the same throughout the year, although such premises are situate within the limits aforesaid.¹

Where licensed premises are enlarged during the currency of the license a difficulty may arise as to whether the business done in the enlarged premises is within the protection afforded by the license. This is a question of fact, and it is for the justices in each case to determine whether or not the premises have retained their identity. The license will cover reasonable additions by way of improvement.² In one case the justices held that the premises were within the license although the addition was larger than the original house. In another case the conversion of stables into additional private rooms and a bar was held to amount to new premises, rendering the license holder liable for selling therein. In both of these cases the Court refused to disturb the finding of the justices.³

In the case of a sale of liquor for consumption off the premises it may be doubtful whether the sale has taken place on the licensed premises and is protected, or at some place elsewhere, such as the house of the customer, and is not. Two recent cases illustrate this distinction. In *Pletts v. Campbell*⁴ a brewer, having an off license for retailing beer, sent his carter to take orders at a distance. He selected on his licensed premises the goods, in this case a jar of beer, which he thought would satisfy the purpose. He then handed the jar with others for other persons to the carter, and sent him to the premises of a customer, where the jar was delivered and where it was subsequently paid for. The magistrates being of opinion that the sale

¹ L. A. 1874, § 18. As to sales at fairs formerly, see 5 & 6 Ed. VI. c. 25, § 6; 35 Geo. III. c. 113, § 17; 6 Geo. IV. c. 81, § 11; 9 Geo. IV. c. 61, § 36; 1 Wm. IV. c. 64, § 29; 24 & 25 Vict. c. 91, § 13; 25 & 26 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, §§ 19, 24; 27 & 28 Vict. c. 8, § 5. See also *Hayward v. Holland*, 37 J. P. 376; 28 L. T. 702; 21 W. R. 920.

² *R. v. Raffles*, 1 Q. B. D. 207; 45 L. J. M. C. 61; 40 J. P. 68; 34 L. T. 180; 24 W. R. 536; *R. v. Bradford*, 74 L. T. 287; 60 J. P. 265.

³ *R. v. Hants*, 44 J. P. 72; *Mahon v. Gaskell*, 42 J. P. 583; *R. v. Smith*, 31 J. P. 259; 15 L. T. 178. See also *Deer v. Bell*, 64 L. J. M. C. 85; 58 J. P. 513.

⁴ [1895] 2 Q. B. 229; 64 L. J. M. C. 225; 59 J. P. 502; 73 L. T. 344; 43 W. R. 634.

of this jar of beer was effected off the licensed premises, convicted, and on a case stated by the Quarter Sessions, the Court held that this conviction was right, all the material incidents of the transaction having taken place off the premises, which for this sale had only served the purpose of a storehouse.

In *Pletts v. Beattie*,¹ a brewer sent his traveller to take orders from customers at their houses. The orders so obtained the traveller wrote down upon postcards bearing (i.a.) the following words: "I assent to the appropriation by you to this order at your brewery of goods of the above description and in a deliverable state." The customers having signed the postcards, the traveller posted them to the brewery; where, upon their receipt, specific goods were appropriated to each order, and subsequently sent to the customers, who paid for the goods on delivery. Upon these facts the Court held that a specific appropriation of the goods had taken place at the brewery, and that in the circumstances of the case the proper inference was that the property passed on the licensed premises, and that a conviction could not be supported. In this case, however, Wright, J., said a slight change in the circumstances might have made the sale illegal, and that the word "sell" in the section might be satisfied by an agreement to sell.²

It is not the policy of the Licensing Acts to prevent the holders of "off" licenses employing *bonâ fide* agents or travellers to obtain orders away from the licensed premises. But the employer may render himself liable to conviction if he rents some office, other than his own licensed premises, as a centre for his agent's operations. The following cases (both decisions under the Excise Acts) illustrate this distinction.

In *Stallard v. Marks*³ a conviction for retailing spirits without a license was upheld under the following circumstances. The appellants were wine and spirit merchants in Worcester, and held all the necessary licenses for dealing

¹ [1896] 1 Q. B. 519; 65 L. J. M. C. 86; 60 J. P. 185; 74 L.T. 648.

² Cf. *Stretch v. White*, 25 J. P. 485.

³ 3 Q. B. D. 412; 47 L. J. M. C. 91; 42 J. P. 359; 38 L. T. 566; 26 W. R. 694.

in and retailing spirits there. They had a traveller who took an office in Cheltenham in his own name and received orders there, which he sent on to Worcester to be executed. The expenses of this office were re-imbursed to him by his principals. No spirits were stored on the Cheltenham premises. "We think," said Manisty, J., "that if a person takes a house or part of a house, either in his own name or the name of any other person, and there, either personally or by his agent, makes sales of spirits by retail, he carries on business there as a retailer of spirits notwithstanding he keeps no spirits there, and the spirits which he sells there are kept in and delivered from a store in another town, where he has a store and carries on the business of a wine and spirit merchant."

In *Stuckberry v. Spencer*¹ a Bristol spirit merchant employed as his agent a person residing at Cowbridge in Glamorganshire. This agent occupied premises in Cowbridge, where he carried on a trade in agricultural implements. At these premises he received orders for spirits, which he transmitted to his principal at Bristol, who forwarded the liquor to the customers direct, the customers sending payment to Bristol. No part of the rent of the Cowbridge premises was paid by the principal in Bristol. On these facts the justices refused to convict, finding that the agent in taking the orders acted as a *bonâ fide* traveller; and on appeal the Court declined to disturb this finding.

Exception in Favour of Heirs—Penalties.—An exception is created by this section in favour of the heirs, executors, administrators and assigns of a licensed person who dies, and in favour of the trustee of any licensed person who is adjudged bankrupt or whose affairs are liquidated by arrangement during the currency of his license. These persons may continue the business of selling on the licensed premises till the special sessions next ensuing, or, if these are holden within fourteen days, till the special sessions next again.²

¹ 55 L. J. M. C. 141; 51 J. P. 181.

² A somewhat similar provision to the above was contained in 9 Geo. IV.

Where a widow, being a license holder, died intestate, the Court held that her eldest son, though not of age, might lawfully carry on the business till the next ensuing special sessions, and was improperly convicted for so doing.¹

The maximum penalty for a first offence under this section is £50, or imprisonment with or without hard labour for one month; for a second offence £100, or imprisonment for three months; and for a third or any subsequent offence £100, or imprisonment for six months.² On a second offence³ the Court may in addition disqualify the offender (for any term not exceeding five years) from holding any license for the sale of intoxicating liquors; while on a third or any subsequent offence he may be so disqualified for ever.

If a license holder is convicted under this section a second time he forfeits his license.

The penalties above mentioned are maximum penalties. In the case of a second or any subsequent offence, the penalty inflicted may in no case be less than twenty shillings if the offender holds a justices' license or certificate.⁴

Where the offender is so licensed the Court may on any conviction declare, under the above section, all intoxicating liquor found in his possession, and the vessels containing such liquor, to be forfeited.

c. 61, § 18, but is now repealed. A like provision has been enacted in regard to beer and wine excise licenses under 3 & 4 Vict. c. 61, § 8, and 23 & 24 Vict. c. 27, § 12, by which in the case of death the Commissioners of Excise may authorise (by endorsement on the license) the representative of the deceased licensee to carry on the business during the remainder of the license term without payment of further duty.

¹ *Rose v. Frogley*, 57 J. P. 376; 62 L. J. M. C. 181; 69 L. T. 530; 9 T. L. R. 466; 17 Cox C. C. 685; 5 R. 530.

² The punishment is alternative, i.e. fine or imprisonment, in discretion of the Court. The section does not mean imprisonment failing the payment of the fine. *In re Clewley*, 8 Q. B. D. 511; 51 L. J. M. C. 140; 46 J. P. 534; 46 L. T. 482; 30 W. R. 704; *R. v. Newcastle Justices*, 3 Q. B. D. 545 (*Re Brown*); 47 L. J. M. C. 108; 42 J. P. 598; 38 L. T. 682; 26 W. R. 757.

³ The first offence must also have been an offence against this section. See *In re Authers*, 22 Q. B. D. 345; 58 L. J. M. C. 62; 53 J. P. 116; 60 L. T. 454; 37 W. R. 320.

⁴ L. A. 1874, § 12; see *post*, p. 168.

From all convictions for offences against the Licensing Acts, 1872 and 1874, an appeal lies to Quarter Sessions.¹

Similar Offences under other Acts.—A similar offence is enacted by the Sale of Beer Act, 1795,² which is still in force. Under that Act any person convicted of selling ale or beer or any other excisable liquors by retail in his house, outhouse, or yard, garden, orchard, or other place, without being duly licensed so to do, is liable to a penalty on conviction of £20 and costs, and, if convicted a second time, is disqualified from thereafter holding a license. Under this Act also an appeal lies to Quarter Sessions by a person convicted.³

By the Spirits Act, 1880, any person who hawks, sells, or exposes to sale any spirits otherwise than in premises for which he is licensed to sell spirits, is liable to a penalty of £100 and forfeiture of such spirits. In default of payment of this fine, on summary conviction the offender may be imprisoned with or without hard labour. Any person may arrest a person found committing this offence.⁴

2. Occupier of Unlicensed Premises privy or consenting to Sale.—*The occupier of any unlicensed premises on which any intoxicating liquor is sold, or if such premises are occupied by more than one person, every occupier thereof, shall, if it be proved that he was privy or consenting to the sale, be subject to the penalties imposed upon persons for the sale of intoxicating liquors without license.*⁵

To render the occupier liable it must be shewn that he was privy or consenting to the sale. Under § 18 of the Alehouse Act, 1828 (now repealed),⁶ which prohibited the permitting of unlicensed selling, it was held that an agreement by a licensed person to permit selling on a

¹ L. A. 1872, § 52; see *post*, Section XXI.; p. 175.

² 35 Geo. III. c. 113, § 1. See *Ash v. Lynn*, L. R. 1 Q. B. 270; 35 L. J. M. C. 159; 30 J. P. 247; 14 W. R. 583.

³ *Ibid.* § 12. As to "duly licensed" under this Act, see *R. v. Drake*, 6 M. & S. 116.

⁴ 43 & 44 Vict. c. 24, § 146.

⁵ L. & A. 1872, § 4.

⁶ 9 Geo. IV. c. 61, § 18; L. A. 1872, second schedule.

part of his premises by a person not licensed was void, as contrary to public policy.¹

There is a similar section in the Excise Licenses Act, 1825,² by which the occupier of premises is made liable to the excise penalty imposed upon unlicensed selling, where retailing takes place upon his premises by some person unknown, if he was privy thereto. The amount of such excise penalty varies according to the liquor retailed, in the case of spirits it is £100.³

3. Seller Liable for Drinking (with his Privy or Consent) on Premises contrary to License.—*If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same to be drunk on the premises drinks such liquor on the premises where the same is sold, or on any highway adjoining or near such premises, the seller of such liquor shall, if it shall appear that such drinking was with his privy or consent, be subject to the following penalties (that is to say) :—*

For the first offence he shall be liable to a penalty not exceeding ten pounds ;

For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds.

For the purposes of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor or under his control, or used by his permission.⁴

To establish this offence it is not necessary to prove that the liquor was actually consumed if the Court is satisfied that consumption of the intoxicating liquor was about to take place.⁵ A conviction for this offence may, by order of the Court before whom the offender is tried, be recorded upon the license of the person convicted.⁶

The person responsible under this section is the seller. The section is apparently intended to prevent the holder

¹ *Ritchie v. Smith*, 6 C. & B. 462 ; 18 L. J. C. P. 9 ; 12 J. P. 822.

² 6 Geo. IV. c. 81. § 27.

³ See *post*, Excise Licenses, Section XXII.

⁴ L. A. 1872, § 5.

⁵ See *Ibid.*, § 62.

⁶ L. A. 1874, § 13.

of an "off" license from selling liquor as if he were the holder of an "on" license, a result very likely to ensue if the responsibility for drinking upon his premises were not laid upon the seller.

It must be shewn that the drinking of the liquor in the manner prohibited took place with the privity and consent of the seller: and if upon other adjoining premises, that those premises were under his control.

In *Bath v. White*¹ the purchaser carried the liquor across the road from the seller's premises to a cottage opposite, and handed it over the garden wall to the cottager, who consumed part of it and then handed the rest back to be drunk by persons standing upon the footway. This was held not to be an offence, within the section. In this case, however, there was nothing to shew that the seller knew what was being done with the beer.

The infraction of the law aimed at by this and the succeeding offence was formerly dealt with in three statutes, the provisions of which as to this are now repealed.² The gradual adoption of wider language in these successive provisions illustrate the difficulty felt by the legislature in dealing with such offences.³

4. Evasion of Law as to Drinking on Premises contrary to License.—*If any person having a license to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever, belonging to such licensed person, or hired, used, or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public*

¹ 3 C. P. D. 175; 42 J. P. 375; 26 W. R. 617.

² L. A. 1872 schedule.

³ See 4 & 5 Wm. IV. c. 85, § 4; 32 & 33 Vict. c. 27, § 14; 33 & 34 Vict. c. 29, § 6; also *Cross v. Watts*, 13 C. B. (N.S.) 239; 32 L. J. M. C. 73; 27 J. P. 18; 7 L. T. 463; *Deal v. Schofield*, L. R. 3 Q. B. 8; 37 L. J. M. C. 15; 32 J. P. 181; 17 L. T. 143; 16 W. R. 77.

thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly in manner provided by this Act.

In any proceeding under this section it shall not be necessary to prove that the premises or place or places to which such liquor is taken to be drunk belonged to, or were hired, used, or occupied by the seller, if proof be given to the satisfaction of the Court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his license.¹

A conviction under this section may be recorded upon the license of the person so convicted.²

The language of this section is extremely wide, and if construed literally the words "on or in any place whether enclosed or not" would include the house of the purchaser. The whole section must be construed in the light of the closing words "with intent to evade the conditions of his license."

The person made responsible is again the seller on whose account or for whose benefit or profit the liquor is sold.³

5. Sale of Intoxicating Liquor (for Consumption on the Premises) to Children.—*Every holder of a license who sells, or allows any person to sell, to be consumed on the premises, any description of spirits to any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and every subsequent offence.⁴*

Every holder of a license who knowingly sells, or allows any person to sell, any description of intoxicating liquors to any person under the age of thirteen years for

¹ L. A. 1872, § 6. License includes certificate, *ibid.*, § 74.

² L. A. 1874, § 13.

³ Cf. 4 & 5 Wm. IV. c. 85, § 4; 32 & 33 Vict. c. 27, § 14; 33 & 34 Vict. c. 29, § 6.

⁴ L. A. 1872, § 7. As to meaning of "sale," see L. A. 1872, § 62, and *ante*, p. 92.

*consumption on the premises by any person under such age as aforesaid, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.*¹

"The holder of a license," in both these offences, means the holder of a justices' license or certificate.²

These sections make the license holder himself liable for the sales to children which they prohibit. It will be noticed that both sections deal only with sales of liquor to be consumed on the premises where sold.

Under § 7 of the Licensing Act, 1872, which mentions only the sale of spirits, any such sale for consumption on the premises to any person apparently under the age of sixteen is an offence, without entering upon the question as to by whom the spirits are, in fact, to be consumed.

The second offence under the Intoxicating Liquors (Sale to Children) Act, 1886, extends to the sale of any description of intoxicating liquors, but in this case the age is lowered to thirteen, the intended customer must also be a person under thirteen, and the sale must have been knowingly made.³

6. Selling Liquor otherwise than by Standard Measure.—
Every person shall sell all intoxicating liquor which is sold by retail and not in cask or bottle, and is not sold in a quantity less than half a pint, in measures marked according to the imperial standards.

*Every person who acts or suffers any person under his control or in his employment to act in contravention of this section shall be liable to a penalty not exceeding, for the first offence, ten pounds, and not exceeding for any subsequent offence twenty pounds, and shall also be liable to forfeit the illegal measure in which the liquor was sold.*⁴

This section applies to all sales by retail of intoxicating liquors in quantities of half a pint and upwards where

¹ 49 & 50 Vict. c. 56, § 1. For legal proceedings to be construed as one with the Licensing Acts, 1872 and 1874, see § 2.

² L. A. 1872, § 74.

³ As to the offence of employing children on licensed premises, see *post*, Section XIX.; p. 155.

⁴ L. A. 1872, § 8.

such liquors are not sold in cask or bottle. The protection of the purchaser is here aimed at, who may otherwise be defrauded with short measure.

In *Addy v. Blake*¹ the seller drew the beer into a marked pewter pot in an inner room and then transferred the liquor to an unstamped earthenware jug in which he handed it to his customer. On these facts a conviction was held to be right, as the sale had not been made in a vessel marked according to the imperial standards.

In *Payne v. Thomas*² it was contended that this section only applied to sales where the quantity sold corresponded to some imperial standard. In that case a customer having asked for a "blue" of beer, was handed a vessel containing beer, with the words, "That is two pennyworth." This vessel, on being tested, was found to contain one-third of a quart, a quantity to which no imperial measure corresponds. The seller, having been convicted, appealed. In affirming the conviction, Hawkins, J., said: "I take it to be perfectly clear that the meaning of the section is, that if a licensed person chooses to sell otherwise than by imperial measure, he may do so by selling either in cask or bottle; but that if he sells by retail measure in quantities not less than half a pint, he must sell in measures marked according to the imperial standards."

By § 15 of the Weights and Measures Act, 1878,³ the unit or standard measure of capacity, from which all other measures of capacity, as well for liquids as for dry goods, shall be derived, shall be the gallon containing ten imperial standard pounds weight of distilled water weighed in air against brass weights with the water and the air at the temperature of sixty-two degrees of Fahrenheit's thermometer, and with the barometer at thirty inches. The quart shall be one-fourth part of the gallon, and the pint shall be one-eighth part of the gallon. Under that Act every person using, or having in his possession for use, in

¹ 19 Q. B. D. 478; 51 J. P. 599; 56 L. T. 711; 35 W. R. 719.

² 60 L. J. M. C. 3; 54 J. P. 824; 63 L. T. 456; 39 W. R. 240.

³ 41 & 42 Vict. c. 49. Proceedings under this Act are to be taken before a Court of summary jurisdiction (§ 57).

trade any measure not of the denomination of some Board of Trade standard is liable to a maximum fine of £5 for a first, and £10 for a second, offence.¹ The measure may also be forfeited. Every measure of capacity must have the denomination stamped on the outside in legible figures and letters.² Where a measure for liquids is constructed with a small window or transparent part through which the contents, whether to the brim or to any other index thereof, may be seen without impediment, such measure may be verified and stamped by inspectors under this Act although such measure is made partly of metal and partly of glass or other transparent medium, and that whether such measure corresponds exactly to a Board of Trade standard, or whether it exceeds such standard, but has the capacity of such standard indicated by a level line drawn through the centre of the window or transparent part.³ An inspector authorised in writing by a justice of the peace, also every justice of the peace, may at any time inspect measures within his jurisdiction which are used, or in the possession of any person for use, for trade.⁴

7. Making or using any Internal Communication between Licensed Premises and any House of Public Resort.—*Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment house, shall be liable to a penalty not exceeding ten pounds for every day during which such communication remains open.*

*In addition to any penalty imposed by this section any person convicted of an offence under this section shall, if he be the holder of a license, forfeit such license.*⁵

The words "licensed premises" mean premises licensed by the justices. As to the meaning of the words "premises which are used for public entertainment and resort," it has been held (under the Vagrant Act)⁶ that a private

¹ 41 & 42 Vict. c. 49, § 24.

² *Ibid.*, § 28.

³ *Ibid.*, 46.

⁴ *Ibid.*, 48.

⁵ L. A. 1872, § 9. Cf. 2 & 3 Vict. c. 47, § 45.

⁶ 5 Geo. IV. c. 83, § 4.

house where a public auction of furniture is going on is, for the time being, a place of public resort;¹ so, too, the platform of a railway station² and a cricket ground.³

What constitutes a refreshment house cannot be precisely defined. In each case it must be a matter of more or less, and it is for the justices to consider the particular facts of each case as they arise.⁴

It is not necessary to constitute a refreshment house that intoxicating liquors should be sold on the premises.⁵

Under the Refreshment Houses Act, 1860, a single room without sitting accommodation where lemonade and gingerbeer were sold to visitors from a counter was held a refreshment house;⁶ and so also where coffee and cigars only were sold.⁷ In *Muir v. Keay*, a case decided under that Act,⁸ Blackburn, J., said⁹ that it was not necessary that entertainment should be something in the nature of refreshment: it was the correlative of resort—the reception and accommodation of the public who resorted to the place in question—and meant public reception.

Any person convicted under this section, who is a license holder, forfeits his license. Where such forfeiture has occurred the owner of the premises may (if it is the first offence of the kind committed by the license holder) apply to a Court of summary jurisdiction for authority to carry on the business on the same premises until the next special transfer sessions.¹⁰

8. Illicit Storing of Intoxicating Liquors.—*If any licensed person has in his possession on the premises in respect of which his license is granted, any description of intoxicating liquor which he is not authorised to sell, unless he shall account for the possession of the same to the satisfaction*

¹ *Sewell v. Taylor*, 29 L. J. M. C. 50; 7 C. B. (N.S.) 160; 1 L. T. 37.

² *Ex parte Davis*, 26 L. J. M. C. 178; 21 J. P. 280; 2 H. & N. 149.

³ *Turnbull v. Appleton*, 45 J. P. 469.

⁴ Per Blackburn, J., in *Muir v. Keay*, L. R. 10 Q. B. 594; 44 L. J. M. C. 143; 40 J. P. 694; 41 J. P. 423; 23 W. R. 700.

⁵ *Kelleway v. Macdougall*, 45 J. P. 207.

⁶ *Howes v. Inland Revenue*, 1 Ex. D. 385; 46 L. J. M. C. 15; 41 J. P. 423; 35 L. T. 584; 24 W. R. 897.

⁷ *Muir v. Keay*, *supra*.

⁸ L. R. 10 Q. B. at p. 597.

⁹ 23 & 24 Vict. c. 27, § 6.

¹⁰ L. A. 1874, § 15; see p. 41, *ante*.

*of the Court by which he is tried, he shall forfeit such liquor and the vessels containing the same, and shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds.*¹

“Licensed person” here means, a person licensed by the justices.² The onus of satisfying the magistrates that the forfeiture ought not to take place is, by this section, cast upon the licensed person, and apparently the Court ought not to declare the liquor forfeited until the license holder has had an opportunity of being heard in defence of his property.³

Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail, or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorised to be sold by retail, may in his discretion grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorised to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited.⁴

Intoxicating liquors so forfeited shall be sold or otherwise disposed of as the Court may direct. The proceeds

¹ L. A. 1872, § 10.

² Ibid., § 74.

³ See *Gill v. Bright*, 41 L. J. M. C. 22; 36 J. P. 168; 25 L. T. 591; 20 W. R. 248. This case was decided under § 15 of the Wine and Beerhouse Act, 1870, now repealed.

⁴ L. A. 1874, § 17.

of such sale to be applied in like manner as penalties are applied, but the Court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture.¹

When a constable has entered any premises in pursuance of a warrant under § 17 of the Licensing Act, 1872, and has seized and removed liquor apparently there for unlawful sale, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding forty shillings.

“Illegal dealing” includes both buying and selling; therefore the purchaser as well as the seller may incur this penalty.²

Any constable may demand the name and address of any person found on any premises on which he seizes or from which he removes any such liquor, and if he has reasonable ground to suppose that the name or address given is false may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend him without warrant and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address, who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding £5.³

9. Licensed Person failing to keep his name affixed to the Licensed Premises.—*Every licensed person shall cause to be painted or fixed, and shall keep painted or fixed on the*

¹ L. A. 1872, § 51. As to application of penalties, see *post*, Section XX.

² *Mackenzie v. Day*, [1893] 1 Q. B. 289; 62 L. J. M. C. 49; 57 J. P. 216; 68 L. T. 345.

³ L. A. 1874, § 17.

*premises in respect of which his license is granted, in a conspicuous place and in such form and manner as the licensing justices may from time to time direct, his name, with the addition after the name of the word "licensed," and of words sufficient, in the opinion of the said justices, to express the business for which his license has been granted, and in particular of words expressing whether the license authorises the sale of intoxicating liquor to be consumed on or off the premises only, as the case may be; and no person shall have any words or letters on his premises importing that he is authorised as a licensed person to sell any intoxicating liquor which he is not in fact duly authorised to sell. Every person who acts in contravention of the provisions of this section shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.*¹

The notice must set out the name of the licensed person, and in particular whether he is licensed to sell for consumption on or off the premises. Where the license is a six-day license only, the notice must indicate this fact.² Where the license is an early closing one, the notice must "contain such words as the licensing justices may order for giving notice to the public that an early closing license has been granted in respect of the premises."³

The license mentioned in this section includes a justice's license and a justice's certificate.⁴

There is a similar provision in the Excise Licenses Act, 1825, requiring the holder of an excise license to have his name affixed outside his premises, under pain of incurring an excise penalty of £20.⁵

¹ L. A. 1872, § 11, as amended by L. A. 1874, § 28, which substituted in this section the licensing justices for the Commissioners of Inland Revenue.

² L. A. 1872, § 49.

³ L. A. 1874, § 7.

⁴ L. A. 1872, § 74.

⁵ 6 Geo. IV. c. 81, § 25.

SECTION XVI.

OFFENCES AGAINST PUBLIC ORDER.¹

10. Penalty on Persons found drunk.—*Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding ten shillings, and on a second conviction within a period of twelve months shall be liable to a penalty not exceeding twenty shillings, and on a third or subsequent conviction within such period of twelve months be liable to a penalty not exceeding forty shillings.*

Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle, or steam-engine, or who is drunk when in possession of any loaded fire-arms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings, or, in the discretion of the Court, to imprisonment, with or without hard labour, for any term not exceeding one month.

*Where the Court commits any person to prison for non-payment of any penalty under this section, the Court may order him to be imprisoned with hard labour.*²

¹ In the case of offences numbered 10 to 16 inclusive, "licensed person" and "licensed premises" mean persons and premises licensed by justices for the sale of intoxicating liquors; and premises having an occasional license are licensed premises within the meaning of these offences. See L. A. 1872, § 74, and L. A. 1874, § 20.

² L. A. 1872, § 12. As to the offence of being found drunk and riotous

Any person found drunk in any highway or other public place, whether a building or not, is liable to the above penalty. In a case decided under the Vagrant Act, 1873, a railway carriage travelling on its journey was held to be a public place.¹

Any person found drunk on any licensed premises is also liable to this penalty. In *Lester v. Torrens*² a magistrate convicted a license holder of this offence who had been found drunk on his own premises after closing hours; but stated a case. The Court quashed the conviction. Lush, J., said, "It is clear that it was not intended to punish drunkenness in general, for the provision of the statute of James, which did so, was repealed, and no similar provisions re-enacted. Drunkenness is only so far made an offence as it is an offence against public order. I cannot, however, agree that innkeepers are excluded from § 12 altogether. Why should an innkeeper found drunk on a highway not be liable to the penalty? The section deals with the person as a member of the public, and an innkeeper is within the section as a member of the public. The section adds to the words 'public place' the words 'whether a building or not.' This was necessary because a building open alongside the highway is as much public for the purposes of the Act as the highway. I think, looking at the collocation of words, that 'licensed premises' for the purposes of this section must mean premises open to the public during licensed hours, or during the time when the premises are a *quasi* public place. It seems to me that the innkeeper, if drunk on his own premises while they are open, is as much amenable to the penalty as if he was found drunk on the highway. It is clear, however, that the section does not apply to a person not being an innkeeper found drunk in his own private house. If the innkeeper lived next door to the in any street or thoroughfare in the Metropolitan police district, see 2 & 3 Vict. c. 47, § 58.

¹ *Langrish v. Archer*, 10 Q. B. D. 44; 47 J. P. 295; 47 L. T. 548. The words in that Act are "any open and public place to which the public have access or are permitted to have access."

² 2 Q. B. D. 403; 46 L. J. M. C. 280; 41 J. P. 821; 25 W. R. 691.

licensed premises, he might be drunk in his own house without being liable. Why should he be liable if he lives on the licensed premises and gets drunk at a time when they are not open, because during certain hours of the day they are open to the public? When they are closed, they are as much his private house as a house in which he lives next door."

While approving the above decision the Court has held, however, in a recent case that licensed premises in fact do not cease, after closing hours, to be licensed premises within the meaning of this offence, and that a person found drunk on such premises after closing hours who is not the landlord, nor an inmate, nor a lodger, may be convicted.¹

The foregoing offences of being found drunk may be tried by one justice sitting alone.²

Three further offences of drunkenness are defined by the Act:—(1) riotous or disorderly behaviour while drunk, in any highway or other public place; (2) being drunk while in charge of any carriage,³ horse, cattle,⁴ or steam-engine in any highway or other public place: (3) being drunk when in the possession of any loaded fire-arms.

These three offences are dealt with more stringently. A person committing any of them may be apprehended, and is liable, if the Court in their discretion so order, to imprisonment (instead of a fine) with or without hard labour for one month.

A justice disqualified under the Licensing Acts, 1872 and 1874, may lawfully try any of these offences relating to drunkenness, unless the offence in question relates to premises in respect of which he is interested or of which he is wholly or partly the owner, lessee, or occupier, or for

¹ *R. v. Pelly*, [1897] 2 Q. B. 33; 61 J. P. 373; 45 W. R. 504; 66 L. J. Q. B. 519; 76 L. T. 467; 18 Cox, 556.

² L. A. 1872, § 51.

³ Under the Highway Act, 5 & 6 Wm. IV. c. 50, § 78 (the words of which are—"any person driving any sort of carriage . . . so as to endanger the life or limb of any passenger") a bicycle has been held to be a carriage. See *Taylor v. Goodwin*, 4 Q. B. D. 228; 48 L. J. M. C. 104; 43 J. P. 654; 27 W. R. 489; 40 L. T. 458.

⁴ Cattle will apparently include pigs; see *Child v. Hearn*, L. R. 9 Ex. 176; 43 L. J. Ex. 100; 22 W. R. 864.

the owner, lessee, or occupier of which he is manager or agent. The interest must be a beneficial interest and not a purely legal one. If, being so interested, he tries a case in respect of such premises the finding of the Court is nevertheless not thereby invalidated.¹

11. Licensed Person permitting Drunkenness on Licensed Premises.—*If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.*²

For these two offences the licensed person is made responsible. The first is permitting drunkenness or any violent, quarrelsome, or riotous conduct to take place upon the licensed premises. A licensed person who sells drink to a person already drunk may be guilty of permitting drunkenness.³ But, as this offence implies actual knowledge in the offender, it will be a good defence to shew that the licensee did not know that the person served with drink was, in fact, drunk. For a man cannot be said to permit that of which he has no knowledge.⁴

The offence may be committed even where there is no sale and no drink is served to the drunken man. For knowingly suffering a drunken person to remain on licensed premises is permitting drunkenness thereon.⁵ Whether or not drunkenness has been permitted is in each case a question of fact, and where the magistrates find the offence proved, even on very slender evidence, the Court will not interfere.

¹ L. A. 1872, § 60.

² Ibid., § 13; L. A. 1874, § 13. As to permitting drunkenness in houses of public resort in the Metropolitan police district, see 2 & 3 Vict. c. 47, § 44. See also p. 111, *supra*, note 1, as to "licensed premises."

³ *Edmunds v. James*, [1892] 1 Q. B. 18; 56 J. P. 40; 61 L. J. M. C. 56; 65 L. T. 675; 40 W. R. 140.

⁴ *Somerset v. Wade*, [1894] 1 Q. B. 574; 63 L. J. M. C. 126; 58 J. P. 231; 70 L. T. 452; 42 W. R. 399.

⁵ *Hope v. Warburton*, [1892] 2 Q. B. 134; 61 L. J. M. C. 147; 56 J. P. 328; 66 L. T. 589; 40 W. R. 510. Under L. A. 1872, § 18, a licensed person may refuse to admit a drunken person, or may turn such person off his premises: see *post*, p. 127.

In *Ex parte Ethelstane*¹ the only evidence was that the drunken man, after visiting several other licensed houses, went to that of the defendant and was subsequently found drunk one hundred yards from the defendant's licensed premises. The magistrates having convicted, the Court refused to quash the conviction, on the ground that this was some evidence of an offence by the defendant of permitting drunkenness.

In proceeding against an offender under this section it is not necessary to state the names of the persons permitted to be drunk.² A licensed person cannot be convicted under this section who is himself drunk on his own premises.³

In the case of the second offence here dealt with, viz. selling intoxicating liquor to a drunken person, the prohibition is absolute, and it is not necessary to prove knowledge. Therefore if such a sale is, in fact, proved, it is not material to consider whether the license holder or his servant actually knew that the customer when served was drunk.⁴ At the same time ignorance on the part of the offender may properly be considered in mitigation of the penalty. Where two men, one of whom was drunk, entered a public-house together, and, in response to the order of the sober man, drink was supplied, part of which the drunken man consumed, this was held to be a sale to a drunken person.⁵

Where a sale to a drunken person is proved, it is the license holder who is liable. Thus, where the sale is effected by a servant, acting within the general scope of his employment, the licensee, and not the servant, is responsible; and this responsibility extends even to the case of a servant selling in breach of his master's express *bonâ fide* orders to the contrary; for public policy requires that a license

¹ 40 J. P. 39; 32 L. T. 339.

² *Wray v. Toke*, 17 L. J. M. C. 183; 12 J. P. 804; 12 Q. B. 492.

³ *Warden v. Tye*, 2 C. P. D. 74; 46 L. J. M. C. 111; 41 J. P. 120; 35 L. T. 852.

⁴ *Cundy v. Le Cocq*, 13 Q. B. D. 207; 48 J. P. 599; 53 L. J. M. C. 125; 51 L. T. 265; 32 W. R. 769.

⁵ *Seathcard v. Johnson*, 52 J. P. 389; 57 L. J. M. C. 41.

holder should thus be made liable for the acts of his servants, as a licensee cannot personally supervise all the sales on his premises. Nor is the hardship of the rule so real as may at first appear, because where the magistrates are satisfied that the license holder honestly intended to comply with the law, they may be trusted to impose only a nominal fine, and to abstain from endorsing the license.¹

Where any person is found guilty of either of these offences under this section, the Court before whom he is tried may, if it thinks fit, order the conviction to be recorded on his license.²

12. Licensed Person permitting Prostitutes to resort to his House.—*If any licensed person knowingly permits his premises to be the habitual resort of or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.*³

This also is an offence for which the license holder is made responsible. It must be shewn, however, that the offence has been knowingly committed. If the licensed person did not know that the women in question were reputed prostitutes he is not liable.⁴

There is nothing unlawful in a publican serving prostitutes with drink like ordinary customers. This offence is aimed at preventing such women pursuing their calling on licensed premises under the pretext of getting refreshment. It is, therefore, an offence to allow them to remain longer than is reasonably necessary for that purpose. It has recently been held to be an offence to allow such women to

¹ *Commissioners of Police v. Cartman*, [1896] 1 Q. B. 655 (per Lord Russell, C.J., 658); see S. C. 65 L. J. M. C. 113; 60 J. P. 357; 74 L. T. 726; 44 W. R. 637; 18 Cox C. C. 341; 12 T. L. R. 334.

² L. A. 1874, § 13. ³ L. A. 1872, § 14. See also *supra*, p. 111, note 1.

⁴ *Somerset v. Wade*, [1894] 1 Q. B. 578, per Collins, J.

remain on the licensed premises when not partaking of refreshment.¹ The presumption, apparently, in such case being that they are only there for immoral purposes. It is not necessary to prove any indecent behaviour in the house;² nor to specify the names of the particular women who were present.³

A conviction under this section may be recorded upon the license of the person convicted.⁴

The keeper of a licensed house may also be liable for knowingly suffering prostitutes to assemble at and continue in his premises under the Towns' Police Clauses Act, 1847. The maximum penalty under that Act is £5.⁵ A similar penalty is imposed for this offence in the Metropolitan police district under the Metropolitan Police Act, 1839.⁶

The Refreshment Houses Act, 1860, which, as to this, only applies now to refreshment houses in which intoxicating liquors are not sold by retail imposed a penalty of 40s. for a first offence of this nature, £5 for a second, and £20 for a subsequent offence, or forfeiture of the excise license with disqualification for a year.⁷

13. Licensed Person permitting his Premises to be a Brothel.—*If any licensed person is convicted of permitting his premises to be a brothel he shall be liable to a penalty not exceeding twenty pounds, and shall forfeit his license, and he shall be disqualified for ever from holding any license for the sale of intoxicating liquors.*⁸

It would seem that in order to establish this offence, knowledge that the premises were in fact being used as a brothel must be brought home either to the licensed person or to some servant to whom he has delegated the charge of the house. In the absence of such knowledge the licensee

¹ *Sharpe v. Hughes*, 57 J. P. 104.

² *Bellasco v. Hannant*, 31 L. J. M. C. 225; 3 B. & S. 13; 26 J. P. 823; 6 L. T. 577; 10 W. R. 867; *Greig v. Bendeno*, 27 L. J. M. C. 294; E. B. & E. 133; *Whitfield v. Bainbridge*, 30 J. P. 644.

³ *Wray v. Toke*, 17 L. J. M. C. 183; 12 J. P. 804; 12 Q. B. 492.

⁴ L. A. 1874, § 13.

⁵ 10 & 11 Vict. c. 89, § 35; *Cole v. Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125; 24 J. P. 596; 2 L. T. 216; 8 W. R. 412; 10 Cox 498.

⁶ 2 & 3 Vict. c. 47, § 44.

⁷ 23 & 24 Vict. c. 27, § 32.

⁸ L. A. 1872, § 15. See also *supra*, p. 111, note 1.

cannot be said to permit such user.¹ One act of permitting such user is some evidence to support a conviction.²

The word "brothel" is the same thing as a "bawdy house," a term which has a well-known meaning, as used by lawyers and in Acts of Parliament. In its legal acceptation it applies to a place resorted to by persons of both sexes for the purpose of prostitution. A house occupied by one woman only, who there receives numbers of men for such purposes, is therefore not a brothel.³ To establish user of premises as a brothel, outward signs of indecency or riotous conduct are not necessary.⁴

Upon a conviction for this offence, the forfeiture and disqualification take effect at once;⁵ and, in addition, the excise license is also forfeited.⁶ But the Court which convicts has power, where an appeal is duly made against such conviction, to grant (upon such conditions as may seem just) a temporary license to be in force during the pendency of the appeal.⁷

A brothel-keeper may also be convicted summarily under the Criminal Law Amendment Act.⁸ As, likewise, a landlord who lets with knowledge of the use to which the premises are to be put.⁹

Keeping a brothel is indictable at common law.⁹

14. Licensed Person harbouring, giving Refreshments to, or bribing Constable.—If any licensed person—

(1) *Knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or*

¹ Cf. *Somerset v. Wade*, [1894] 1 Q. B. 574.

² *R. v. Holland*, 46 J. P. 312.

³ *Singleton v. Ellison*, [1895] 1 Q. B. 607; 64 L. J. M. C. 123; 59 J. P. 119; 72 L. T. 236; 43 W. R. 426; 18 Cox 79.

⁴ *R. v. Rice*, 1 C. C. R. 21; 35 L. J. M. C. 93; 13 L. T. 382; 14 W. R. 56; *Grieg v. Bendeno*, E. B. & E. 133; 27 L. J. M. C. 294.

⁵ *R. v. West Riding Justices*, 21 Q. B. D. 258; 57 L. J. M. C. 103; 52 J. P. 455; 36 W. R. 258.

⁶ L. A. 1872, § 63.

⁷ *Ibid.*, § 53. See *ante*, p. 42.

⁸ 48 & 49 Vict. c. 69, § 13.

⁹ As a nuisance, see Russell on "Crimes," bk. ii., chap. xxxii., § 1.

(2) *Supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty unless by authority of some superior officer of such constable; or*

(3) *Bribes or attempts to bribe any constable, he shall be liable to a penalty not exceeding, for the first offence ten pounds, and not exceeding for the second or any subsequent offence twenty pounds.*¹

To establish the first of the above offences, knowledge must be brought home to the license holder or some one acting on his behalf. He is not responsible, however, for the conduct of a servant who acts clandestinely.² The onus of showing knowledge in a case of harbouring or suffering is upon the prosecution.³ But it is not necessary to show that the constable was supplied with liquor, that being a separate and distinct offence.⁴

No offence is committed where a constable is suffered to remain on the licensed premises in execution of his duty; as *e.g.* for the purpose of preventing or detecting the violation of any of the provisions of the Licensing Acts, 1872 and 1874, which it is his duty to enforce.⁵

The second offence, here defined—supplying liquor or refreshments to a constable on duty—also imports knowledge that the constable so supplied is on duty at the time. Therefore if a publican supplies liquor to any constable in the *bond fide* belief that such constable is off duty no offence is committed. The fact, however, that the constable is in uniform, and that no questions are asked of him, may be sufficient *prima facie* evidence of knowledge.

Commenting on this offence in *Sherras v. De Rutzen*,⁶ Wright, J., said, “There must in general be guilty knowledge on the part of the defendant, or of some one whom he has put in his place to act for him, generally, or in the

¹ L. A. 1872, § 16. See also p. 111, *supra*, note 1.

² *Mullins v. Collins*, L. R. 9 Q. B. 292; 43 L. J. M. C. 67; 38 J. P. 629; 29 L. T. 838; 22 W. R. 297.

³ See *Sherras v. De Rutzen*, *infra*.

⁴ *R. v. Meoth Justices*, 27 Ir. L. T. 127.

⁵ L. A. 1874, § 16.

⁶ [1895] 1 Q. B. 918; 64 L. J. M. C. 218; 59 J. P. 450; 72 L. T. 839; 43 W. R. 526.

particular matter, in order to constitute an offence. It is plain that if guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction, since it would be as easy for the constable to deny that he was on duty when asked, or to produce a forged permission from his superior officer, as to remove his armlet before entering the public-house." In the same case, upon the omission of the word "knowingly" from this offence, Day, J., said, "An argument has been based on the appearance of the word 'knowingly' in sub.-sect. 1 of § 16 and its omission in sub.-sect. 2. In my opinion, the only effect of this is to shift the burden of proof. In cases under sub.-sect. 1, it is for the prosecution to prove the knowledge, while in cases under sub.-sect. 2 the defendant has to prove that he did not know."

Bribing or attempting to bribe any constable is also an offence under this section.

A conviction of any one of the foregoing offences may, in the discretion of the magistrates, be recorded on the license of the person so convicted.¹

15. Licensed Person suffering Gaming upon his Premises.

—*If any licensed person—*

(1) *Suffers any gaming or any unlawful game to be carried on on his premises; or*

(2) *Opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and nineteen, intituled "An Act for the Suppression of Betting Houses,"*

*he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.*²

A person convicted of either of these offences is liable to have the conviction recorded on his license.³

Suffering Gaming.—Any licensed person who suffers

¹ L. A. 1874, § 13.

² L. A. 1872, § 17. See, also, p. 111, *supra*, note 1.

³ L. A. 1874, § 13.

gaming on his premises is liable to incur the above penalty. Money so played for is destined usually to be spent in drink in the licensed house, so for good reason the legislature will not allow this temptation to be held out in licensed houses.¹ The penalty, it will be noticed, is here not on the guest who games, but on the license holder who suffers him to do so.²

As the offence is suffering, knowledge must be brought home to the license holder or to some one acting on his behalf.³ The knowledge required is such knowledge as implies that the licensed person or his servant had the power to prevent the gaming. Thus, a license holder is not liable for a mere casual frolic begun and ended in a few moments, before he could have intervened to prevent it.⁴ Actual knowledge, however, need not be proved; constructive knowledge or proof that a servant in some position of delegated authority has wilfully shut his eyes to what was going on is sufficient to sustain a conviction.⁵ Thus, a licensed hotel keeper may be convicted of this offence when guests in his house play cards for money in a private sitting-room, if it is proved that servants waiting upon such guests have had opportunities of seeing the gaming and not reported it; as this amounts to a connivance for which the license holder is responsible.⁶

In *Redgate v. Haynes*⁷ the licensee went to bed, leaving her house in charge of the hall porter. It was proved that this man thereupon removed to the extreme end of the house from a room occupied by certain guests who began to play cards. The magistrates, upon this evidence, concluded that the porter (under the landlady's instructions) had deliberately kept himself aloof from the guests lest

¹ Per Wills, J., in *Dyson v. Mason*, 53 J. P. 262; 58 L. J. M. C. 55; 53 J. P. 261; 60 L. T. 265.

² *Cooper v. Osborne*, 35 L. T. (N.S.) 348; 40 J. P. 759.

³ *Bond v. Evans*, 21 Q. B. D. 249; 57 L. J. M. C. 105; 52 J. P. 613; 59 L. T. 411; 36 W. R. 767.

⁴ *Awards v. Dance*, 26 J. P. 437.

⁵ *Bosley v. Davies*, 1 Q. B. D. 84; 45 L. J. M. C. 27; 40 J. P. 550; 33 L. T. 528; 24 W. R. 140.

⁶ *Ibid.*

⁷ 1 Q. B. D. 89; 41 J. P. 86; 45 L. J. M. C. 65; 33 L. T. 779.

he should hear the gaming, and they accordingly convicted his mistress. On appeal, the Court upheld the conviction. Blackburn, J., said: "Now, in my judgment, there would be no case of suffering, if what was done was done without any fault on the part of the appellant. What we have to see is whether she purposely abstained from interference, having reason to suspect what was going on in her house, or, what would amount to the same thing, whether there was connivance on her part sufficient to shew a suffering. And I think that if a landlady is away from home or ill, and some other person is left in charge, and that other person, whoever he might be, were to connive at any unlawful game, the landlady would still be answerable, just as if she had herself connived."

In *Crabtree v. Hole*,¹ where the boots left in charge shut his eyes to what was being done, Cockburn, C.J., said: "The duty imposed by the enactment is to take reasonable care that gaming is not suffered on the licensed premises. And if the license holder employs one who does not do his duty, it is the same as if he himself did not do his duty."

Even where a licensed person has given his manager express instructions not to allow gaming, he will still be liable if his manager, without his knowledge, disobeys those instructions.² But, to make the licensee answerable, the servant must apparently be in some position of delegated authority. Waiters attending upon guests in a private room are, it would seem, in such a position.³ But, in *Somerset v. Hart*,⁴ the magistrates were held to be right in refusing to convict the license holder, where a potman had seen bets being made and neither interfered nor reported it.

Unlawful Games.—Any games, whether of skill or chance, become gaming within the meaning of this offence when

¹ 43 J. P. 799.

² *Bond v. Evans*, *supra*.

³ *Bosley v. Davies*, *supra*.

⁴ 12 Q. B. D. 360; 53 L. J. M. C. 77; 48 J. P. 327. This case is explained by Stephen, J., in *Bond v. Evans*, on the ground that there had been no delegation of authority to the potman.

played on licensed premises for money or money's worth. Thus, the game of ten-pins played on a beerhouse keeper's premises for beer;¹ skittles played in an alehouse for beer (although the beer is not to be drunk on the premises);² billiards played for money—whether the money is actually paid³ or credit is given for the losses;⁴ dominoes played for money;⁵ and the game of puff and dart played for a rabbit—purchased as a prize with the contributions of the competitors⁶—are all within this section. The prohibition extends equally to hours during which the premises are closed, and even the license holder himself, though living upon the premises, may not play there with his private friends games of cards for money stakes.⁷ The policy of the law requires that a licensed house should be subject to this disability, as, “if it were not so, the publican might assemble all his friends—and it cannot be said that a publican may not have many friends—who might all come to his house and carry on an extensive system of gaming and drunkenness.”⁸

At common law no game as such was unlawful. Games now unlawful are so only by reason of statutory enactment.⁹ Ace of hearts, pharaoh, basset, and hazard were made unlawful games by 12 Geo. II., c. 28; so, too, other games of a like nature played with dice, except backgammon, by 13 Geo. II., c. 19; and roulette or roly-poly, expressly, by 18 Geo. II., c. 34. Further, under the unrepealed provision of a much earlier statute,¹⁰ every other game of cards

¹ *Danford v. Taylor*, 20 L. T. 483; 33 J. P. 612.

² *Luff v. Leaper*, 36 J. P. 773.

³ *Dyson v. Mason*, 22 Q. B. D. 351; 58 L. J. M. C. 55; 53 J. P. 262; 60 L. T. 265.

⁴ *Parsons v. Alexander*, 5 E. & B. 263; 24 L. J. Q. B. 277.

⁵ *R. v. Ashton*, 1 E. & B. 286; 22 L. J. M. C. 1; 16 J. P. 790.

⁶ *Bew v. Harston*, 3 Q. B. D. 455; 47 L. J. M. C. 121; 42 J. P. 808; 26 W. R. 915.

⁷ *Hare v. Osborne*, 34 L. T. (N.S.) 294; *Cooper v. Osborne*, 40 J. P. 759; 35 L. T. (N.S.) 347; *Osborne v. Hare*, 40 J. P. 759.

⁸ *Patten v. Rhymmer*, 24 J. P. 342; 29 L. J. M. C. 189; 3 E. & E. 1; 2 L. T. 352; 8 W. R. 496.

⁹ The earlier Acts made certain games unlawful only when played in certain places by certain persons and at certain times, or in excess. See 33 Hen. VIII. c. 9; 16 Car. II. c. 7; 9 Anne, c. 14.

¹⁰ 33 Hen. VIII., c. 9.

which is not a game of mere skill is an unlawful game, as being within the words, "any new unlawful game hereafter to be invented." Hence, baccarat has been held to be an unlawful game.¹

Premises used for Betting.—By the second portion of this section the use of licensed premises in contravention of the Betting Act, 1853, is made an offence under the Licensing Act, 1872, and is punishable by the foregoing penalties. Section 1 of that Act² provides that no house office, room, or other place³ shall be opened, kept, or used (1) for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person employed by or acting for such owner, etc., betting with persons resorting thereto; or (2) for the purpose of receiving any money or any valuable thing to await the result of any horse race or other race, fight, game, sport, or exercise. These are two separate and distinct offences—the offence of keeping a betting-house, and the offence of keeping a house for the purpose of receiving deposits on bets.⁴

The purpose for which the house is opened and kept is the real gist of the offence, and it is not necessary to prove that persons did in fact resort to it. Thus, if it be shewn that advertisements, cards, etc., were issued inviting people to come to the house and bet, that would justify a conviction, although no person did in fact respond to the invitation.⁵ But where the only evidence offered against a defendant is resorting, physical resorting must be proved, and the mere sending of letters and telegrams to a house by persons desirous of betting with the occupier is not sufficient to sustain a conviction.⁵

¹ *Jenks v. Turpin*, 13 Q. B. D. 505; 53 L. J. M. C. 161; 48 J. P. 489; 50 L. T. 808. See also, as to baccarat, *Fairclough v. Whitmore*, 64 L. J. Ch. 386; 72 L. T. 374; 43 W. R. 421; and as to gaming generally 8 & 9 Vict. c. 109, Appendix, *post*.

² 16 & 17 Vict. c. 119. See Appendix, *post*.

³ As to meaning of "place," see *McInaney v. Hildreth*, [1897] 1 Q. B. 600; 66 L. J. Q. B. 376; 76 L. T. 463; *Powell v. Kempton Park*, [1897], 2 Q. B. 242; 66 L. J. Q. B. 601; 46 W. R. 8; *R. v. Preedy*, 17 Cox, 433.

⁴ *Bond v. Plumb*, [1894] 1 Q. B. 169; 58 J. P. 168; 70 L. T. 405; 42 W. R. 222.

⁵ *R. v. Brown*, [1895] 1 Q. B. 119; 64 L. J. M. C. 1; 59 J. P. 485; 72 L. T. 22; 43 W. R. 222; 18 Cox, 81.

Any person who uses a bar for the purpose of meeting persons with whom he intends to bet is using it for the purpose of betting with persons resorting thereto, even if the money is always handed over to him outside the house.¹

Persons found in a house used for betting within the meaning of this Act, may (although not found betting) be bound over no more to play, haunt, or exercise thenceforth at any gaming house.²

All betting in public houses is not illegal; therefore something more than casual betting must be proved to sustain a conviction for suffering the premises to be used as a betting house. Where the only evidence was that a certain person had resorted to a public-house and made bets on three consecutive days with other persons in the house, this was held insufficient to convict the person so betting.³ A conviction may be sustained, however, if there is any evidence to shew that betting upon the premises is constant and systematic, as *e.g.* proof of some bets made there, and the finding of books and documents on the premises relating to betting. In *Footo v. Butler*⁴ the prosecution proved two bets made by the publican with the informer, and the existence (to the knowledge of the publican) of betting books upon the premises, and this was held sufficient. It is not necessary that the publican himself should make the bets, he is equally liable if he suffers a bookmaker who has no interest in the licensed premises to systematically bet there with persons resorting thereto.⁵

At the same time, the payment of bets in a public-house, which have been made elsewhere, does not constitute a user of the house for the purpose of betting within the meaning of this Act.⁶

¹ *R. v. Worton*, [1895] 1 Q. B. 227; 64 L. J. M. C. 74; 72 L. T. 29; 18 Cox C. C. 70.

² *Murphy v. Arrow*, [1897] 2 Q. B. 527; 77 L. T. 435; 46 W. R. 94.

³ *Whitchurst v. Fincher*, 54 J. P. 565; 62 L. T. 433. See, as to casual gaming in a private house, *R. v. Davies*, 66 L. J. Q. B. 513; 76 L. T. 787.

⁴ 41 J. P. 792. See also *R. v. Herbert*, 61 J. P. 679; *Peddie v. Bennett*, 61 J. P. 680.

⁵ *Hornsby v. Raggett*, [1892] 1 Q. B. 20; 55 J. P. 708; 66 L. T. 21; 40 W. R. 111.

⁶ *Bradford v. Dawson*, 61 J. P. 134; 66 L. J. Q. B. 191; 76 L. T. 54.

A member of a *bonâ fide* club who makes bets with other members in the club-room cannot be convicted under the Betting Act.¹ The house of such a club is not licensed premises, however, for it requires no license.²

Deposits on Bets.—The second offence under § 1 of the Betting Act—keeping a house, room, etc., for the purpose of receiving deposits on bets—is committed by every licensed person who opens, keeps, or uses his premises, or suffers them to be opened, kept, or used, for the purpose of any money or any valuable thing being received by or on behalf of himself or any person using his house, as or for the consideration of any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid.

To establish this offence it must be shewn that the money or valuable thing was actually received upon the premises. Thus, where a person making bets received the money on a piece of waste ground, and by arrangement was allowed to deposit it in the house of a neighbouring publican, it was held that the publican had committed no offence against this Act.³

In addition to his liability under § 17 of the Licensing Act, 1872, a licensed person may also be liable under § 3 of the Betting Act, 1853, as the owner or occupier of a house used in contravention of that statute. The money penalty imposed by the earlier Act is much more severe than that under the Licensing Act: a fine of £100 may be imposed for a first offence, or imprisonment up to a period of six months with or without hard labour, but there is no provision for endorsing the license. When a licensed

¹ *Downes v. Johnson*, [1895] 2 Q. B. 203; *Oldham v. Ramsden*, 44 L. J. C. P. 309; 39 J. P. 583; 32 L. T. 825.

² See *supra*, p. 93.

³ *Davis v. Stephenson*, 24 Q. B. D. 529; 59 L. J. M. C. 73; 54 J. P. 565; 62 L. T. 436; 38 W. R. 492.

person is proceeded against under the earlier Act he may claim to be tried by a jury;¹ in which case the subsequent proceedings against him will be by indictment.²

In proceeding against a licensed person, however, the prosecution must elect whether they will proceed under the Licensing Act, 1872, or under § 3 of the Betting Act; for he cannot be punished under both statutes.³

16. Drunken or Riotous Person refusing to quit Licensed Premises.—*Any licensed person may refuse to admit to and may turn out of the premises in respect of which his license is granted any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this Act.*

Any such person who, upon being requested in pursuance of this section by such licensed person, or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, shall be liable to a penalty not exceeding five pounds, and all constables are required on the demand of such licensed person, agent, or servant to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

*The Court committing any person to prison for non-payment of any penalty under this section may order him to be imprisoned with hard labour.*⁴

A licensed person may refuse to admit to, and may eject from his premises, any person who is drunken, violent, quarrelsome, or disorderly. He may also refuse to admit to or eject from his premises any person whose presence there would subject him to a penalty under the Licensing Acts, 1872 and 1874. Thus he may turn out prostitutes

¹ 42 & 43 Vict. c. 49, § 17. Cf. *R. v. Brown*, [1895] 1 Q. B. 119; 64 L. J. M. C. 1; 59 J. P. 485; 72 L. T. 22; 43 W. R. 222.

² *R. v. Preedy*, 17 Cox, 433. As to the offence of inviting persons to bet through letters, telegrams, circulars, etc., see *post*, 37 & 38 Vict. c. 15; also *Cox v. Andrews*, 12 Q. B. D. 126; *Sagar v. Stoddart*, [1895] 2 Q. B. 474; 64 L. J. M. C. 234; 59 J. P. 598.

³ *Sims v. Pay*, 58 L. J. M. C. 29; 53 J. P. 420; 60 L. T. 602. See, also, L. A. 1872, § 59; 52 & 53 Vict. c. 63, § 33. Cf. the excise penalty for suffering gaming in a refreshment house, 23 & 24 Vict. c. 27, § 32; which now only applies to such house when no intoxicating liquors are there sold.

⁴ L. A. 1872, § 18. See also p. 111, *supra*, note 1.

remaining longer than is necessary for their reasonable refreshment;¹ or any person whose conduct would expose him to a conviction for allowing his premises to be used as a brothel;² or a constable on duty, not there for some purpose connected with the execution of his duty, as otherwise the penalty for harbouring such constable might be incurred;³ or any person gaming or playing any unlawful game.⁴

No such person should be turned out forcibly until he has failed upon request to leave the premises. And in employing force the license holder should use no greater force than is reasonably necessary to remove the delinquent. A licensed person is entitled to obtain the assistance of any constable, whose aid he may demand in expelling any such person. And any such person who fails to leave the premises upon being requested so to do by the license holder, his servant or agent, is liable to a penalty not exceeding £5. If upon conviction the money is not paid, and a distress fails to produce it, the offender may by order of the Court be imprisoned with hard labour.⁵

Prior to the Licensing Act, 1872, it had been decided that a publican might expel from his premises, by force if necessary, any person conducting himself in a disorderly manner, whether his conduct amounted to a breach of the peace or not.⁶ A person coming into the licensed premises in a condition naturally offensive to other persons there, as *e.g.* a sweep in his working clothes after working hours, may be turned out.⁷ And so likewise the landlord of an hotel has been held justified in refusing to serve refreshments to a person who came into the bar accompanied by a large dog which caused alarm and annoyance to the other customers.⁸

A similar offence to the above may be committed on

¹ L. A. 1872, § 14. ² *Ibid.*, § 15. ³ *Ibid.*, § 16. ⁴ *Ibid.*, § 17.

⁵ See 42 & 43 Vict. c. 49, § 21; 47 & 48 Vict. c. 43, § 5; 11 & 12 Vict. c. 43, § 21.

⁶ *Howell v. Jackson*, [1834] 6 C. & P. 725, per Parke, B.

⁷ *Pidgeon v. Legge*, 21 J. P. 743.

⁸ *R. v. Rymer*, 2 Q. B. D. 137; 46 L. J. M. C. 108; 41 J. P. 199; 25 W. R. 415.

premises licensed as a refreshment house (but not for the sale of intoxicating liquors) under the Refreshment Houses Act, 1860. In this case, however, the person refusing to leave the premises must be either drunk, riotous, quarrelsome, or disorderly, and the penalty is only forty shillings.¹

¹ See *post*, 23 & 24 Vict. c. 27, § 41.

SECTION XVII.

OFFENCES AGAINST THE STATUTORY PROVISIONS AS TO
CLOSING LICENSED PREMISES.

17. Sales of Liquor during Closing Hours.—*Any person who during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors, although purchased before the hours of closing, to be consumed in such premises,—*

*shall, for the first offence, be liable to a penalty not exceeding ten pounds, and for any subsequent offence, to a penalty not exceeding twenty pounds.”*¹

The sale here referred to is a sale by retail. Section 3 of the Licensing Act, 1874, requires all premises where intoxicating liquors are sold by retail to be closed during the statutory closing hours, but no penalty is attached to merely opening or keeping open such premises. The offence is opening or keeping open for sale. Thus, where premises had been kept open in prohibited hours, but there was no proof of any sale or exposure for sale, the appellant was held to have been wrongly convicted.²

¹ L. A. 1874, § 9. As to the premises to which the closing hours apply, see *supra*, p. 75; also as to meaning of “sale” and of “intoxicating liquors,” see *supra*, pp. 92, 93.

² *Tassell v. Ovenden*, 2 Q. B. D. 383; 46 L. J. M. C. 228; 41 J. P. 710; 36 L. T. (N.S.) 696; 25 W. R. 692; see *Cates v. Saith*, 23 J. P. 739.

In another case the license holder was a grocer, who also traded as a draper. He had two shops, one used as a grocer's shop, the other as a draper's. They both formed part of his house, from which they could be entered at the back. Each shop had a separate entrance for customers, but there was also a means (occasionally used by customers) of passing through' from the one shop to the other. At night after closing hours this internal communication was closed by shutters or partitions, and the grocer's shop left in darkness; but it could still be entered from the drapery shop by going through the house. The drapery shop, in which no liquor was sold, remained open. The justices having convicted the license holder of keeping his house open for the sale of intoxicating liquors during prohibited hours, the Court set the conviction aside on the ground that the facts disclosed no evidence of keeping open for sale. Field, J., said: "No doubt the occupier might fraudulently keep premises open, and might really and truly be infringing the Act. If there were any ground for supposing that the justices could properly find, or would find as a fact, that the premises were kept open for the sale of intoxicating liquors, or if there were a scintilla of evidence to shew that the appellant, under guise of keeping the drapery shop open after ten o'clock, was carrying on drapery business and, at the same time, supplying liquor from the adjoining shop, I should think the decision perfectly sound, and that it should stand in order that such mischief might be prevented. I can find no trace of any such proceeding in this case. It seems to me that the justices thought that, because he had a license for the whole premises, by keeping open the draper's shop he kept part of the house open for the sale, or exposing for sale, intoxicating liquors. I think, therefore, that the conviction must be reversed." ¹

In *Tassell v. Ovenden* ² the holder of an "off" wine

¹ *Brigden v. Heighes*, 1 Q. B. D. 330; 45 L. J. M. C. 58; 40 J. P. 661; 34 L. T. 242; 24 W. R. 272.

² *Supra*.

and spirit license, who conducted on his premises a combined grocery and drapery business, kept his stock of liquors in a closed wooden case fastened with shutters and a lock. This case stood in the shop, but had a painted notice upon it, intimating that wines and spirits could not be supplied after ten o'clock in the evening; otherwise the trade of the shop went on as usual after that hour. No proof of any sale or exposure for sale after closing hours, other than the presence of this case in the shop, was given. On these facts the justices convicted, holding that the licensed premises must be closed at ten o'clock. The High Court, however, on a special case, quashed the conviction.

At the same time it is not necessary to prove affirmatively any actual sale, if the facts raise an inference of keeping open for that purpose. Thus, where certain persons hired a room in a beerhouse to transact business of their own, and were found therein an hour after closing time still doing their business, but with glasses before them, some of which were not quite empty, it was held that the justices might, on this evidence, convict the keeper of the beerhouse of keeping open for sale, and his guests of being found on licensed premises, after closing hours.¹

So, too, where several persons, neither lodgers nor travellers, were found drinking upon licensed premises in prohibited hours, the license holder was held properly convicted of keeping his premises open for sale, although no direct evidence of sale was given.² Nor is it necessary to prove that the doors of the premises are left open. Where the outer doors were found shut, but drinking was going on within, the offence of keeping open for sale was held to be proved.³

No licensed person holding only a six-day license may

¹ *Pearse v. Gill*, 41 J. P. 742.

² *Smith v. Vaux*, 26 J. P. 134. This conviction was, under 11 & 12 Vict. c. 49, repealed.

³ *Finch v. Blundell*, 26 J. P. 71. See also convictions affirmed, *Thompson v. Greig*, 34 J. P. 214; *Brewer v. Shepherd*, 36 J. P. 373; contra, *Tennant v. Cumberland*, 23 J. P. 51; *Jefferson v. Richardson*, 35 J. P. 470.

sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.¹

A conviction for selling, or exposing for sale, or keeping premises open for sale, or for permitting drink (though purchased before the hours of closing) to be consumed on licensed premises in closing hours, may be endorsed upon the license of the offender.² So, likewise, the keeper of a refreshment house, licensed for the retail sale of foreign wine, who has obtained in respect of his license an abatement of duty under 24 & 25 Vict., c. 91, § 9, is liable, if convicted of selling liquor after ten o'clock at night, to have such conviction endorsed upon his license.³

Keeping open during Riot.—It is also an offence for any licensed person to keep his premises open for sale during any time at which justices have ordered them to be closed on account of riot or tumult. A person so offending is liable to a penalty not exceeding £50; and his premises may be closed by force by any one acting under the order of any justices.⁴

Sales on Vessel in Metropolitan District.—By the Licensing Act, 1842,⁵ it is likewise an offence to sell by retail any wines, spirits, or other exciseable liquors⁶ on any boat, steamboat, or other vessel which may be moored or lying at anchor within the metropolitan police district during the hours and times on Sundays, Good Friday, and Christmas Day, on which licensed victuallers are by law required to keep their houses closed, and any person selling any such liquors on board such boat, etc., within the said district is liable to a penalty not exceeding £5, recoverable before a Metropolitan police magistrate, or, if beyond the jurisdiction of such Courts, before any two justices of the peace. Instead of the foregoing penalty one month's imprisonment may be imposed, in the discretion of the magistrate or justices, as the case may be.

18. Found on Licensed Premises in Closing Hours.—*If*

¹ L. A. 1874, § 10.

² Ibid., §§ 9, 13.

³ L. A. 1872, § 28; L. A. 1874, § 13.

⁴ L. A. 1872, § 23.

⁵ 5 & 6 Vict. c. 44, § 5.

⁶ Beer is not now an exciseable liquor.

during any period during which any premises are required under the provisions of this Act to be closed, any person is found on such premises, he shall, unless he satisfies the Court that he was an inmate, servant, or a lodger on such premises, or a *bonâ fide* traveller, or that otherwise his presence on such premises was not in contravention of the provisions of this Act with respect to the closing of licensed premises, be liable to a penalty not exceeding forty shillings.¹

By this section the onus is thrown upon the defendant of shewing that he is lawfully upon the premises. The offence is being found on licensed premises in closing hours, therefore no purchase or consumption of liquor need be proved. But the defendant is not liable if he can shew he was not upon the premises in contravention of the Licensing Acts. To appreciate what is meant by contravention of the Acts, it is necessary to bear in mind the object of the closing hours provisions, viz. the prevention of trafficking in intoxicating liquors during the prohibited hours.² Hence it is no offence for a licensed person to entertain at his own expense a *bonâ fide* private friend by giving him drink, within the prohibited hours.³ Nor is the presence of such friend upon the licensed premises a contravening of the Acts. So, too, it would seem that the friends of a lodger *bonâ fide* entertained by him may, without offence, be found on the premises after closing hours;⁴ so may any stranger present in pursuit of his lawful calling or for some purpose unconnected with the purchase and consumption of drink, as *e.g.* a person frequenting a grocery shop to which a license is attached for the purchase of groceries after closing hours.⁵

¹ L. A. 1872, § 25. The present closing provisions are those enacted by the L. A. 1874; but that Act and the Act of 1872, are to be read as one Act. See L. A. 1874, § 1.

² L. A. 1874, § 9. See also *R. v. Pelly*, [1897] 2 Q. B. 33; 76 L. T. 467; 45 W. R. 504; 18 Cox, 556.

³ L. A. 1874, § 30.

⁴ *Pine v. Barnes*, 20 Q. B. D. 221; 57 L. J. M. C. 28; 52 J. P. 199; 58 L. T. 520; 36 W. R. 473.

⁵ *Brigden v. Heighes*, 1 Q. B. D. 330; 45 L. J. M. C. 58; 40 J. P. 661; 34 L. T. 242; 24 W. R. 272; *Ex parte Joynt*, 38 L. T. 390.

In all prosecutions for this offence, however, the justices will do well to be on the alert as to the real position of the person alleging himself to be lawfully upon the licensed premises, as otherwise evasions of the Acts may easily take place. Such an evasion was attempted in *Corbett v. Haigh*,¹ where an innkeeper retained in his house as his private friends, after closing hours, persons who up to that time had been there as the guests of a customer. But the Court held that he was liable.

Where a person was seen to enter licensed premises after closing hours, and to subsequently leave the house with liquor in his possession, this was held to be evidence upon which magistrates ought to have convicted him of the offence of being found on premises after closing hours.²

Person found refusing Name or Address.—Any constable may demand the name and address of any person found on any premises during the period during which such premises are required to be closed. If a name or address is given which he has reasonable ground to suppose is false, he may require evidence of the correctness of such name and address.³

Where such person fails upon such demand to give his name or address, or such evidence, the constable may apprehend him without a warrant, and carry him, as soon as practicable, before a justice of the peace. Any person failing to give his name and address, when required as above, or giving a false name or address, or giving false evidence with respect to his name and address is liable to a penalty not exceeding £5.³

Customer falsely representing Himself to be a Traveller or Lodger.—Every person who by falsely representing himself to be a traveller or a lodger, buys or obtains, or attempts to buy or obtain at any premises any intoxicating liquor during the period during which such premises are closed in pursuance of the Licensing Acts, 1872 and 1874, is liable to a penalty not exceeding £5.⁴

¹ L. R. 5 C. P. D. 50; 44 J. P. 39; 42 L. T. 185; 28 W. R. 430.

² *Thomas v. Powell*, 57 J. P. 329.

³ L. A. 1872, § 25.

⁴ *Ibid.*

Where, upon the hearing of any charge against a licensed person for contravening the provisions as to closing, the justices are satisfied that the defendant took all reasonable means to ascertain and truly believed that the purchaser was a *bonâ fide* traveller, and also think that the purchaser falsely represented himself to be such, they may direct proceedings to be instituted against such purchaser as a person liable for the above offence.¹

Permitting Consumption in Refreshment House.—Any person licensed as the keeper of a refreshment house, but not licensed for the sale of any intoxicating liquor, who allows any such liquor to be consumed on his premises during the hours during which the same would be closed if they were the licensed premises of licensed victuallers, is liable for a first offence to a penalty not exceeding £10, and for any subsequent offence to a penalty not exceeding £20.²

¹ L. A. 1874, § 10.

² L. A. 1872, § 27.

SECTION XVIII.

OFFENCES ARISING OUT OF THE ADULTERATION OF
INTOXICATING LIQUORS.**Proceedings under the Food and Drugs Acts, 1875 and 1879.—**

When a licensed person is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licenses, and may be directed to be recorded on the license of the offender in the same manner as if the conviction were for an offence against the Licensing Acts, 1872 and 1874, and when so recorded shall have effect as if it had been a conviction for an offence against those Acts.¹

The principal Acts dealing with the adulteration of drink are the Sale of Food and Drugs Acts, 1875 and 1879.² In those Acts the term "food" includes every article used for food or drink by man, other than drugs or water.³

19. Selling Intoxicating Liquors mixed with Ingredients Injurious to Health.—*No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder any article of food with any ingredient or material so as to render the article injurious to health,*

¹ L. A. 1874, § 14. The Licensing Act, 1872, contained special provisions as to the adulteration of intoxicating liquors, §§ 19–22. These however, are now repealed, and offences of this nature left to be dealt with under the special Acts dealing with this subject; L. A. 1874, § 33.

² 38 & 39 Vict. c. 63; 42 & 43 Vict. c. 30.

³ 38 & 39 Vict. c. 63, § 2. Proceedings against offenders under these Acts are to be taken before a Court of summary jurisdiction; a person convicted has a right of appeal to Quarter Sessions. See *post*, Section XX., pp. 163, 165, 175. As to particulars of the offence being given in the summons, see *Barnes v. Rider*, 57 J. P. 473.

*with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence after a conviction for a first offence shall be a misdemeanour, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.*¹

A person charged under this Act with the offence of selling intoxicating liquor mixed with some ingredient injurious to health, is entitled to be acquitted if he can shew to the satisfaction of the Court that he did not know that the liquor sold by him was so mixed, and could not with reasonable diligence have obtained that knowledge.² It should be noticed that the onus of establishing such ignorance and absence of negligence is upon the defendant.

20. Selling to the Prejudice of the Purchaser Intoxicating Liquor not of the Nature or Quality demanded.—*No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds.*³

To establish this offence it is not necessary to prove that the article sold is defective in all three respects, if defective in one the offence is committed.⁴ Therefore, to supply an article of a different nature from the article demanded, even where such article is not adulterated, may be an offence.⁵ But no offence is committed where any matter or ingredient not injurious to health is added because such added article is required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption, and is not added fraudulently to increase the bulk, weight, or measure of such food or drug, or conceal the inferior quality thereof.⁶

Nor is the seller liable where the food or drug is

¹ 38 & 39 Vict. c. 63, § 3.

² *Ibid.*, § 5.

³ *Ibid.*, § 6.

⁴ 42 & 43 Vict. c. 30, § 2.

⁵ *Knight v. Bowers*, 14 Q. B. D. 845; 54 L. J. M. C. 108; 49 J. P. 614; 53 L. T. 234; 33 W. R. 613.

⁶ 38 & 39 Vict. c. 63, § 6.

unavoidably mixed with some extraneous matter in the process of collection or preparation.¹

A sale where the purchaser buys for analysis only is none the less to the prejudice of the purchaser on that account.²

The object of the Act is not to insist upon any particular standard for any particular article, but to prevent impositions upon the public. If the customer knows what he is getting, the sale is not to his prejudice.³ Therefore, the Act further provides that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if, at the time of delivering such article or drug, he shall supply to the person receiving the same a notice by a label, distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.⁴

Further, in determining whether an offence has been committed by selling, to the prejudice of the customer, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.⁵

It will be noticed that this last provision, while specifying certain degrees of dilution as permissible, does not prohibit the sale of these liquors in a still more diluted state. For such a sale is no offence unless it is also to the prejudice of the purchaser, *i.e.* unless the adulteration is clandestine and the sale a fraudulent dealing.⁶ If both parties know perfectly well the nature of what they are dealing in there is no offence. Further, although the above mode of giving notice to the purchaser is, if adopted,

¹ 38 & 39 Vict. 63, § 6.

² 42 & 43 Vict. c. 30, § 2.

³ *Palmer v. Tyler*, 61 J. P. 389.

⁴ *Ibid.*, § 8.

⁵ 42 & 43 Vict. c. 30, § 6.

⁶ *Sandys v. Small*, 3 Q. B. D. 449; 47 L. J. M. C. 115; 39 L. T. 118; 26 W. R. 814 (per Cockburn, C.J.).

sufficient, the seller is not limited to giving notice in that manner, but may do so in any other way which will have the effect of preventing prejudice to the customer from the transaction.¹ Where the seller relies, as his defence, upon the customer's knowledge of the adulteration, the onus is upon the seller to prove such knowledge. But he need not prove it affirmatively; it is sufficient for him to prove facts raising the inference that the customer must have known.²

In *Sandys v. Small*,³ where the article complained of was whisky mixed with water and sold thirty degrees under proof, it was proved that there was a notice in large letters put up in a conspicuous position: "All spirits sold here are mixed, 38 & 39 Vict. c. 63, §§ 8 and 9,"—and this was held a sufficient defence.

At the same time, where notice is relied upon, it is not sufficient to prove merely that a notice has been put up somewhere in the house; the position and character of the notice must raise the inference that the customer did see it, and the magistrates must so find in fact.⁴

In *Gage v. Elsey*⁵ a notice in the following form was held a sufficient protection to the seller: "Notice.—All spirits sold in this establishment are of the same superior quality as heretofore, but, to meet the requirements of the Foods and Drugs Adulteration Act, they are now sold as diluted spirits—no alcoholic strength guaranteed."

It is not necessary, in order to establish a conviction, that the person prejudiced should be an ordinary customer or likely to suffer personal pecuniary loss or injury.⁶ The buyer may be an inspector or any other person purchasing with a view to analysis only.⁷ But the representation as to the nature, substance, or quality of the article must have been made at the time of the actual sale. A prior intention to cheat the customer, and an untruth told with

¹ *Palmer v. Tyler*, 61 J. P. 389.

² *Ibid.*

³ *Supra.*

⁴ *Morris v. Johnson*, 54 J. P. 612; *Morris v. Askew*, 57 J. P. 724.

⁵ 10 Q. B. D. 518; 52 L. J. M. C. 44; 47 J. P. 391; 48 L. T. 226; 31 W. R. 500. See also *Spiers v. Bennett*, [1896] 2 Q. B. 65; 65 L. J. M. C. 144; 60 J. P. 437; 74 L. T. 697; 44 W. R. 510.

⁶ *Hoyle v. Hutchinson*, 4 Q. B. D. 233; 43 J. P. 430; 48 L. J. M. C. 97; 40 L. T. 252; 27 W. R. 487.

⁷ 42 & 43 Vict. c. 30, § 2.

that object before the sale as to the quality of the thing about to be sold do not expose the seller to conviction, if subsequently, upon the actual sale, he divulges the truth.¹

At the same time, it is not necessary for the prosecution to shew that a sale to the prejudice of the buyer has been effected knowingly by the seller. Nor is proof of absence of knowledge here a good defence. Any sale in contravention of Act is an offence whether the seller knew or not that the article sold was not of the nature, substance, or quality demanded.² The fact that the offender acted in ignorance is, however, a proper circumstance for the magistrates to consider in fixing the amount of the penalty to be imposed.³

The words "sell" and "seller" in this offence are used with the widest meaning. Whoever performs the physical act of selling in contravention of the section is guilty.⁴ But where the sale is effected by a servant, the master on whose behalf the servant was acting is equally liable. For where the business of the servant is to sell, public policy requires that the master shall see that the servant within the scope of his employment does not contravene the Act.⁵ It has been held, however, that to shew to the satisfaction of the magistrates that the sale by the servant was in violation of express orders to the contrary is to establish a good defence on behalf of the master.⁶ This decision does not seem consistent with other cases, in which it has been held unnecessary to prove a *mens rea*, but it seems to be based upon the inference that in such case the servant is not acting within the scope of his authority.

Defence of Warranty.—In addition to the defence that

¹ *Kirk v. Coates*, 16 Q. B. D. 49; 55 L. J. M. C. 182; 50 J. P. 148; 54 L. T. 178; 34 W. R. 295.

² *Betts v. Armstead*, 20 Q. B. D. 771; 57 L. J. M. C. 100; 52 J. P. 471; 58 L. T. 811; 34 W. R. 720; *Pain v. Boughtwood*, 24 Q. B. D. 353; 55 J. P. 469; *Dyke v. Gower*, [1892] 1 Q. B. 220; 61 L. J. M. C. 70; 56 J. P. 168; 65 L. T. 760; 17 Cox C. C. 421.

³ *Brown v. Foot*, 56 J. P. 581; 61 L. J. M. C. 110; 66 L. T. 649; 17 Cox C. C. 509.

⁴ *Hotchin v. Hindmarch*, [1891] 2 Q. B. 181; 55 J. P. 775; 65 L. T. 149.

⁵ *Brown v. Foot*, *supra*, per Wills, J.

⁶ *Kearley v. Tonge*, 60 L. J. M. C. 159; 56 J. P. 72; 65 L. T. 261. In this case no counsel appeared for the respondent on the appeal.

the purchaser had notice, and therefore was not prejudiced, it is open to the seller to escape the penalties imposed by the Acts, by shewing that he purchased the liquor complained of with a written warranty. This defence is given by § 25 of the Food and Drugs Act, 1875, which provides as follows: "If the defendant in any prosecution under this Act prove to the satisfaction of the justices or Court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, and that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence."

The warranty mentioned in this section is a specific warranty. In *Harris v. May*¹ (where the article sold was milk) the warranty relied upon was a general written contract to supply eighty-six gallons of good and pure milk (each and every day) for six months, the said milk to be delivered twice daily, and the Court held that, although an action might have lain for breach of warranty upon this contract, it was not sufficiently specific to meet the requirements of the statute as to a particular delivery upon a particular date. In *Laidlaw v. Wilson*,² however, where an order had been given for three tons of Kilvert's pure lard, and the article complained of was part of a delivery under the order, and had further been accompanied by an invoice describing it as "Kilvert's pure bladdered lard," the Court held that the invoice sufficiently earmarked the particular parcel as having been delivered under a contract in which a written warranty was contained, and that the seller was therefore protected. There is no magic in the word "warranty;" it is not necessary

¹ 12 Q. B. D. 97; 53 L. J. M. C. 39; 48 J. P. 281; 32 W. R. 595.

² [1894] 1 Q. B. 74; 63 L. J. M. C. 35; 58 J. P. 58; 42 W. R. 78.

that the word should be actually used ; it is enough if the language of the document relied upon imports a warranty.¹

Where the defence of a warranty is relied upon, the defendant must affirmatively shew (1) that the liquor was delivered upon the contract containing the warranty ; (2) that it had not been tampered with in transit ; (3) that he had no reason to believe at the time when he sold it that it was otherwise than represented. If he has had the opportunity of testing the liquor and has not done so he may fail to establish the third contention.²

Any person forging or misapplying a warranty, or giving a false warranty, is guilty of an offence, and may be proceeded against.³ But no offence is committed if at the time when the false warranty is given the person giving it does not in fact know, and has no reason to believe, that it is false.

21. Refusing to sell Intoxicating Liquor to a Public Officer for Analysis.—*If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores, [or any street or open place of public resort,] and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.*⁴

The officer, inspector, or constable here mentioned are those specified in § 13 of the Food and Drugs Act, 1875, which, to secure the testing of articles sold in contravention of that Act, provides that any medical officer of health, inspector of nuisances, or inspector of weights and

¹ *Laidlaw v. Wilson*, *supra*. See also *Farmers v. Stevenson*, 60 L. J. M. C. 70 ; 55 J. P. 407 ; 63 L. T. 776 ; *Elder v. Smithson*, 57 J. P. 740, 809 ; *Iorns v. Von Tromp*, 64 L. J. M. C. 171 ; 59 J. P. 246 ; 72 L. T. 499 ; 18 Cox, 133.

² *Hotchin v. Hindmarch*, [1891] 2 Q. B. 181 ; 55 J. P. 775 ; 65 L. T. 149.
³ 38 & 39 Vict. c. 63, § 27 ; *Derbyshire v. Houlston*, [1897] 1 Q. B. 772 ; 66 L. J. Q. B. 569 ; 61 J. P. 373 ; 76 L. T. 624.

⁴ 38 & 39 Vict. c. 63, § 17. The words in brackets were inserted by 42 & 43 Vict. c. 20, § 5.

measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of that Act, may procure¹ any sample of food, and if he suspect the same to have been sold to him in contravention of the Act submit it to the public analyst of the district and obtain his certificate as to the result.² Where, however, the purchase is made for the purpose of analysis the purchaser must, after the purchase is completed, forthwith notify to the seller or to his agent selling the article his intention to have it analysed by the public analyst, and offer to divide the article then and there into three parts, to be marked and sealed up—one for the seller, one for the analyst, and one for himself.³

This provision as to notice is for the protection of the seller, and is a condition precedent to a prosecution.⁴ It has been held to apply to a private purchaser⁵ as well as to a public officer. But this seems doubtful.⁶ The notice must be given “forthwith,” the intention being to strike at the very moment of time at which the seller parts with the article.⁷ Where a constable bought gin from an “ignorant barmaid,” and said it was for analysis, but did not add “by the public analyst,” the Court held the notification insufficient, and quashed the conviction.⁸ No particular form of words is necessary however. If the seller is informed that the sample is going to be analysed by a public official, the object of the statute is attained.⁹

¹ Either himself or by his agent. *Horder v. Scott*, 5 Q. B. D. 522; 49 L. J. M. C. 78; 44 J. P. 520; 42 L. T. 660; 28 W. R. 918; *Stace v. Smith*, 45 J. P. 141; *Somerset v. Miller*, 54 J. P. 614; *Garforth v. Esam*, 56 J. P. 85.

² The certificate must be in the form prescribed by the Food and Drug's Act, 1875, otherwise it is bad. *R. v. Smith*, [1896] 1 Q. B. 596; 65 L. J. M. C. 104; *Pearl v. Barstow*, 44 J. P. 699.

³ 38 & 39 Vict. c. 63, § 14.

⁴ *Smart v. Watts*, [1895] 1 Q. B. 219; 64 L. J. M. C. 89; 59 J. P. 54; 71 L. T. 768; 43 W. R. 379.

⁵ *Parsons v. Birmingham*, 9 Q. B. D. 17; 51 L. J. M. C. 111; 46 J. P. 727; 30 W. R. 748.

⁶ *Enniskillen v. Hilliard*, 14 Ir. L. R. (Ex. D.) 214.

⁷ *Parsons v. Birmingham*, *supra*.

⁸ *Barnes v. Chipp*, L. R. 3 Ex. D. 176; 47 L. J. M. C. 85; 38 L. T. 570; 26 W. R. 635.

⁹ *Wecker v. Webb*, 51 J. P. 661.

Where an inspector is in fact authorised to purchase a sample under the Act, it is not material, as regards this last offence, whether the seller knows the circumstance or not. Thus a publican was held rightly convicted who refused to supply an inspector with half a pint of rum from a particular bottle (from which the inspector had just been served), although the officer was not in uniform and had not disclosed his authority.¹

The Analyst's Certificate.—The analyst's certificate should state the facts which are disclosed by the analysis, and where the foreign ingredient (as *e.g.* water) is one of the constituent parts of the thing analysed it should specify the proportion of that ingredient found to be present.

In *Newby v. Sims*,² where the charge was adulterating rum with an excessive quantity of water, the analyst's certificate stated, *i.a.*, "I find that the sample contained an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the sample is not a sample of genuine rum." The Court held that this was not sufficient to support a conviction. Day, J., said, "It comes to this, that the analyst takes upon himself to act as the judge of law and fact, whereas those questions are for the magistrates to determine. To enable us to act on the certificate we must know what the analyst finds in fact. The statement as to an excess of 13 per cent. is quite insufficient, for there is no statement above what amount in fact the excess is. The analyst ought to determine as a matter of fact how much water there is in the pint of rum, and as he has not done so, the certificate is not in such a form as to amount to evidence on which the magistrates could act."

In the case of a milk prosecution, a certificate was held bad which said "5 per cent. of added water," as this was stating the analyst's own opinion, and not the facts.³

¹ *Payne v. Hack*, 57 J. P. 325.

² [1894] 1 Q. B. 478; 63 L. J. M. C. 228; 58 J. P. 263; 70 L. T. 105.

³ *Fortune v. Hanson*, [1896] 1 Q. B. 202; 65 L. J. M. C. 71; 60 J. P. 88; 74 L. T. 145; 44 W. R. 431; 18 Cox C. C. 258. See also *R. v. Smith*, [1896]

Where, however, to a statement, "Milk 94 per cent., added water 6 per cent.," the analyst added a fact upon which he said "this opinion is based," the Court held the certificate should have been accepted as sufficient.¹

On the hearing of the charge, the analyst's certificate is sufficient *primâ facie* evidence of the facts therein stated, unless the defendant requires the analyst to be called as a witness.² It is sufficient evidence, if not contradicted, to justify a conviction, and the magistrates ought to act upon it. But it is not conclusive, and when the person charged calls evidence contradicting the certificate, the magistrates must weigh the evidence and decide as to the facts in dispute.³

22. Retailer of Beer found in possession of Adulterated Beer.—*A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification), and any beer found to be adulterated or diluted or mixed with any other matter or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited and he shall incur a fine of fifty pounds.*⁴

In order to establish this offence it is not necessary to shew that water has been used to dilute the beer; such dilution may be produced by adding weak beer to a beer of a stronger description. In *Crofts v. Taylor* a publican had in his cellar a cask of beer supplied by a firm of brewers, and also a quantity of small beer of much less strength. He drew off a certain quantity from the cask of strong beer and filled it up with the small beer, adding some finings for clarification; the result was a mixture 15 per cent. weaker than the strong beer originally in

1 Q. B. 596; 63 L. J. M. C. 67; 58 J. P. 445; 70 L. T. 373; 17 Cox C. C. 735.

¹ *Bridge v. Howard*, [1897] 1 Q. B. 80; 65 L. J. M. C. 229; 75 L. T. 300; 45 W. R. 78; 60 J. P. 790.

² 38 & 39 Vict. c. 63, § 21.

³ *Hewitt v. Taylor*, [1896] 1 Q. B. 287; 65 L. J. M. C. 68; 60 J. P. 311; 74 L. T. 51; 44 W. R. 431; *Harrison v. Richards*, 45 J. P. 552.

⁴ 48 & 49 Vict. c. 51, § 8 (2) (Customs and Inland Revenue Act, 1885). This section imposes also a similar penalty upon a brewer of beer having adulterated beer in his possession.

the cask. Upon these facts, it was held that the publican had diluted the beer within the meaning of the Act, and was properly convicted; for the policy of the Act is, that after a dealer has purchased beer for retailing, it shall remain unaltered, at any rate that it shall not be diluted, so that the purchaser may know what he is drinking.¹

This construction of the Act does not prevent a publican selling to a customer a glass composed of two kinds of beer of different strengths, such as what is popularly known as "half and half," as the publican might sell the two kinds of beer in two different glasses and allow the customer to mix them, or mix them himself, which, assuming he did it in the presence of the customer, would make him the agent of the customer in so doing.²

The penalties and forfeitures following upon a conviction under this Act, are to be enforced under the provisions of the Excise Acts.³

¹ *Crofts v. Taylor*, 19 Q. B. D. 524; 56 L. J. M. C. 137; 51 J. P. 789; 57 L. T. 310; 36 W. R. 47.

² *Ibid.*

³ 48 & 49 Vict. c. 51, § 9.

SECTION XIX.

MISCELLANEOUS OFFENCES.

23. Harboursing Thieves in Licensed Premises.—*Every person who occupies or keeps any lodging-house, beerhouse, public-house, or other house or place where intoxicating liquors are sold, or any place of public entertainment or public resort, and knowingly lodges or knowingly harbours thieves or reputed thieves, or knowingly permits or knowingly suffers them to meet or assemble therein, or knowingly allows the deposit of goods therein having reasonable cause for believing them to be stolen, is guilty of an offence against this Act, and liable to a penalty not exceeding ten pounds, and in default of payment to be imprisoned for a period not exceeding four months with or without hard labour.*¹

This offence is not limited to premises having a justices' license.

The Court before which an offender is brought may, if it think fit, in addition to or in lieu of any penalty, require him to enter into recognisances, with or without sureties, to keeping the peace, or be of good behaviour during twelve months.²

Further, an offender is liable on a first conviction to forfeit, in the discretion of the justices, any license held by him for the sale of any intoxicating liquors, or for keeping any place of public entertainment or public resort; on a

¹ The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112, § 10). Cf. penalty under 23 & 24 Vict. c. 27, § 32, see also 10 & 11 Vict. c. 89, § 35.

² The security required of any surety shall not exceed £20.

second conviction such license is forfeited and the offender disqualified for two years. Two convictions within three years in respect of the same premises (whether of the same person or not) disqualify the premises for such period, not exceeding one year, as the Court shall direct. And any license granted in respect of premises so disqualified is void.

The term "certificate" is not used in the section creating this offence, and there is no definition, as in the Licensing Act, 1872, providing that the word "license" shall include a justices' certificate. But inasmuch as a certificate is only of value as enabling the holder to obtain a license from the excise authorities, and such excise license is clearly within the section, the disability created by it will in effect operate equally upon a beerhouse keeper and a fully licensed publican.

A license holder who suffered a meeting, attended by several reputed thieves, to be held upon his premises for the purpose of raising a subscription for the wife and children of a man committed to take his trial, and of providing money for the defence of such person, was held by the Court to be guilty of this offence.¹ In arriving at this conclusion Mellor, J., said, "It is not every casual meeting of thieves, or reputed thieves, who might accidentally come together, which constitutes an offence for which the landlord is made liable—it would be hard upon him if it were so; but we think that the intention of the legislature was to prohibit the meeting of thieves together in a public-house, though they might have no improper object in meeting, and for the reason, viz. that when thieves get together it affords opportunity and inducement to devise crimes and offences."

Any licensed person charged with this offence must produce his license for examination, and deliver it up if forfeited. Wilful neglect or refusal to produce his license

¹ *Marshall v. Fox*, L. R. 6 Q. B. 370; 40 L. J. M. C. 142; 35 J. P. 631; 24 L. T. 751; 19 W. R. 1108. In this case the prosecution was under 32 & 33 Vict. c. 99, § 10, now repealed; but the words defining the present offence are practically the same.

exposes the defendant to an additional penalty, not exceeding five pounds, for such neglect or refusal.¹

24. Refusing to admit Constable to Licensed Premises.—*Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act² or this Act³ which it is his duty to enforce, at all times enter on any licensed premises, or any premises in respect of which an occasional license is in force.*

Every person who, by himself or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.⁴

The licensed premises here mentioned include premises licensed by the justices and premises in respect of which an occasional license is in force.⁵

A constable is not entitled to enter licensed premises for the above purpose unless he has reasonable grounds for suspecting that a violation of the provisions of the Licensing Acts is taking place therein. If, however, good grounds of suspicion exist he may go beyond the public portion of the house, and even enter a private room where he suspects the violation to be going on. The mere fact that sounds of music and singing are heard in the house is not good ground of suspicion. But the circumstance that persons have been seen coming away drunk on a previous occasion may be.⁶

In *Caswell v. Hundred* it was attempted to make a

¹ 34 & 35 Vict. c. 112, § 10. Proceedings in respect of this offence are to be taken before a Court of summary jurisdiction (see *post*, Section XX., p. 161), and any person convicted may appeal (see *post*, Section XXI., p. 175), as if aggrieved by a conviction under the Licensing Act, 1872: see 34 & 35 Vict. c. 112, § 17, as amended by 39 & 40 Vict. c. 20, § 5.

² L. A. 1872.

³ L. A. 1874.

⁴ *Ibid.*, § 16.

⁵ See *Harrison v. MacI'neel*, 48 J. P. 469; 50 L. T. 210.

⁶ *Duncan v. Dowding*, [1897] 1 Q. B. 575; 61 J. P. 280; 66 L. J. Q. B. 362; 76 L. T. 294; 45 W. R. 383; but cf. *R. v. Dobbin*, 48 J. P. 182, which is apparently inconsistent with this case.

publican responsible for the conduct of his wife who was alleged to have stopped for a time a constable seeking to enter the licensed house for the purpose of detecting a violation of the Acts. The publican was in the house at the time, but there was no evidence that he knew of his wife's action in the matter, and it was shewn that only when absent did he depute to her the management of the house. On these facts the Court held a conviction could not be supported.¹

25. Forging a Justice's Certificate.—*If any person forge or tender, knowing the same to have been forged, any certificate authorised to be granted by this Act he shall, on summary conviction before two or more justices, be liable to a penalty not exceeding twenty pounds, or, in the discretion of the justices before whom he is tried, to imprisonment for any period not exceeding six months, with or without hard labour.*²

Any excise license granted in pursuance of such forged certificate is void, and any person making use of such forged certificate, knowing the same to have been forged, is disqualified from obtaining at any time thereafter a license for the sale of beer, cider, or wine, by retail, under the Beerhouse and Wine and Beerhouse Acts.³

Any unauthorised person who imitates or affixes an impression of a justices' seal on any license or certificate or imitation of a license or certificate, or knowingly uses a license or certificate or an imitation of a license or certificate falsely purporting to be sealed by the justices' seal is guilty of forgery.⁴

26. Licensed Person refusing to furnish Billets.—*If a keeper of a victualling house commits any of the offences following, that is to say,*

- (1) *Refuses or neglects to receive any officer, soldier, or horse, billeted upon him in pursuance of this Act,*

¹ 54 J. P. 87.

² The Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27, § 11). This refers to a justices' certificate.

³ Ibid.

⁴ See 33 & 34 Vict. c. 29, § 4 (2); also L. A. 1872, § 40 (3).

or to furnish such accommodation as is required by this Act; or

- (2) *Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable, or from his liability to billets, or any part of such liability; or*
- (3) *Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;*

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.¹

A victualling house within the meaning of this offence includes all inns, hotels, livery stables, and alehouses, also houses where wine is sold by retail for indoor consumption. But it does not include taverns of Vintners of the City of London nor houses licensed only for the off sale of beer and cider.²

27. Payment of Wages in Public-houses.—*No wages shall be paid to any workman at, or within, any public-house, beershop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman bonâ fide employed by him.³*

Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with this provision, is guilty of an offence against the Payment of Wages in Public Houses Prohibition Act, 1883.⁴ In the event of any wages being paid by any person in contravention of that Act, for or on behalf of any employer, such employer shall himself be guilty of an offence against the Act, unless he proves that he has taken all reasonable

¹ Army Act, 1881, 44 & 45 Vict. c. 58, § 110.

² Ibid., § 104 (1). As to billets, see this Act in Appendix, p. 467.

³ 46 & 47 Vict. c. 31, § 3.

⁴ Ibid.

means in his power for enforcing the provisions of the Act, and to prevent such contravention.¹

Every person guilty of an offence against this Act is liable to a penalty not exceeding ten pounds for each offence. Offences are prosecuted and penalties recovered under the provisions of the Summary Jurisdiction Acts.²

“Workmen” in this Act includes³ any labourer, servant in husbandry, journeyman, artificer, handicraftsman, or person otherwise engaged in manual labour, whether under or above twenty-one years of age, but does not include a domestic or menial servant,⁴ nor any person employed in or about any mine to which the Coal Mines Regulation Act, 1872,⁵ or the Metalliferous Mines Regulation Act, 1872,⁶ applies. The first of these Acts (for which must now be substituted the Coal Mines Regulation Act, 1887⁷) related to mines of coal, mines of stratified ironstone, mines of shale and mines of fireclay; the second to all other mines. Although miners are thus excepted from the operation of the Payment of Wages in Public Houses Act, 1883, they are similarly protected by the provisions of the above-mentioned mining Acts.

Wages of Miners.—By the Metalliferous Mines Regulation Act, 1872, § 9, no wages shall be paid to any person employed in or about any mine to which that Act applies, at or within any public-house, beershop, or place for the sale of any spirits, wine, beer, cider, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto or occupied therewith. Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section is guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner,

¹ 46 & 47 Vict. c. 31, § 3.

² *Ibid.*, § 4.

³ § 2.

⁴ As to what “menial servant” includes, see *Nowlan v. Ablet*, 2 C. M. & R. 54; 4 L. J. Ex. 155; *Todd v. Kerrich*, 8 Ex. 151; 22 L. J. Ex. 1; 17 J. P. 490; *Nicoll v. Greaves*, 17 C. B. (N.S.) 27; 33 L. J. C. P. 259; 28 J. P. 599; 12 W. R. 961.

⁵ 35 & 36 Vict. c. 76.

⁶ *Ibid.*, c. 77.

⁷ 50 & 51 Vict. c. 58.

agent, and manager of the mine shall be guilty of an offence against the Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his powers enforcing the provisions of this section, to prevent the contravention or non-compliance.¹

Persons offending against this provision may be tried before a Court of summary jurisdiction, but such Court must consist of two or more justices, or some magistrate or officer empowered to do alone any act authorised to be done by more than one justice.² On conviction an offender is liable to a maximum penalty of £2, unless he is an owner or agent, when the penalty may be £20. When an inspector has given written notice of an offence against this provision there is a further penalty of £1 a day so long as the offence continues thereafter to be committed.³

A prosecution for an offence against the above provisions may not be instituted against an owner or agent except by an inspector or with the consent in writing of a Secretary of State.⁴ The information must be laid within three months from the time when the matter to which it relates arose.⁵

By the Coal Mines Regulation Act, 1887⁶ (which has repealed, and is now substituted for, the like Act of 1872), an offence in similar language is enacted as regards the payment of wages to persons employed in coal mines, and the other mines excepted from the operation of the Metaliferous Mines Regulation Act, 1872.⁷ Here, too, the prosecution must be instituted within three months,⁸ and in the case of an owner, agent, manager, or sub-manager (where the offence has not been committed personally by him) proceedings can only be taken by an inspector or with the consent in writing of a Secretary of State.⁹ Any person charged under this Act is an admissible witness,¹⁰ and a defendant may appeal to Quarter Sessions if a fine is inflicted amounting to or exceeding one-half the maximum fine allowed under the Act.¹¹

¹ 35 & 36 Vict. c. 77, § 9. ² § 33. ³ § 31. ⁴ § 35. ⁵ § 34.
⁶ 50 & 51 Vict. c. 58. ⁷ § 11. ⁸ § 62. ⁹ § 65. ¹⁰ § 62. ¹¹ § 63.

28. Causing Children to sing or play for Profit on Licensed Premises.—*If any person—*

(B.) *Causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine p.m. and six a.m.; or*

(C.) *Causes or procures any child under the age of eleven years, or, having the custody, charge, or care of any such child, allows that child to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale—*

*That person shall, on summary conviction, be liable, at the discretion of the Court, to a fine not exceeding twenty-five pounds, or, alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment with or without hard labour for any term not exceeding three months.*¹

Proceedings must be taken within six months;² the defendant and the wife or husband of the defendant are competent witnesses;³ and where the defendant does not plead guilty an appeal lies to Quarter Sessions.⁴ The first offence prohibits boys under the age of fourteen and girls under the age of sixteen singing or playing, etc., for profit on licensed premises between nine in the evening and six in the morning; the second offence prohibits a child of either sex under eleven years of age being on such premises for the above purposes at all.

¹ The Prevention of Cruelty to Children Act, 1894. 57 & 58 Vict. c. 41, § 2.

² *Ibid.*, § 18.

³ *Ibid.*, § 12.

⁴ *Ibid.*, § 19.

In the case of boys and girls above the age of eleven years but under the ages of fourteen and sixteen respectively a local authority has, however, power to extend or restrict the above-mentioned hours in any part or throughout the whole of its district.¹ Further, in the case of any occasional sale or entertainment held on premises licensed for the sale of intoxicating liquor, the nett proceeds of which are wholly applied for the benefit of any school, or to any charitable object, a special exemption from the operation of the above provisions may be granted in writing under the hands of two justices of the peace.²

29. Illegal Hiring at Elections.—(a) *Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by a license (whether the license be for consumption on or off the premises); (b) or any premises where any intoxicating liquor is sold, or is supplied to members of a club, society, or association other than a permanent political club; (c) or any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises, shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at a parliamentary election, and if any person hires or uses any such premises, or any part thereof, for a committee room he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring.*³

Any person guilty of this offence is liable on summary conviction to a fine not exceeding £100.⁴ A candidate or an election agent personally guilty of this offence is guilty of an illegal practice.⁴

This prohibition against using such premises as above for election committee rooms does not,³ however, extend to any part of such premises which is ordinarily let for the purpose of chambers or offices, or the holding of public meetings or of arbitrations, if such part has a separate

¹ 57 & 58 Vict. c. 41, § 2.

² § 2.

³ Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51, § 20). ⁴ Ibid., § 21.

entrance, and no direct communication with any part of the premises on which any intoxicating liquor is sold or supplied as aforesaid.

By 16 & 17 Vict., c. 68, § 6, it was provided that no polls at any election for members of Parliament in England and Wales shall be taken at any inn, hotel, tavern, public-house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing.

Municipal Elections.—It is also an offence of illegal hiring to hire or use as a committee room or for holding a meeting to promote the election of a candidate at a municipal election any premises licensed for the sale of any intoxicating liquor, whether for on or off consumption, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption thereon, or any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises.¹ As in the case of Parliamentary elections, the person letting, as well as the hirer, is guilty of the offence, if he knew of the intended illegal use. In this case, also, there is a proviso exempting parts of such premises ordinarily let as chambers or offices, or for the holding of public meetings or arbitrations, where such parts have a separate entrance, and no direct communication with the portion of the premises on which the intoxicating liquors are supplied. A person found guilty of illegal hiring in connection with a municipal election is liable to a fine not exceeding £100.²

Other Elections and Meetings.—The foregoing prohibition as to municipal elections applies also to elections of local boards and improvement commissioners, as defined by the Public Health Act, 1875, and to poor-law guardians, and school boards, subject to this limitation, that, in the case of elections to these offices, it is not unlawful to hold

¹ Municipal Elections Act, 1884 (47 & 48 Vict. c. 70, § 16).

² Ibid., § 17.

a meeting for procuring the return of a candidate on any such licensed or other premises not situate in an urban sanitary district or in the Metropolis.¹

By § 61 of the Local Government Act, 1894, no parish meeting, or meeting of a parish council, or of a district council, or of a board of guardians shall be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting, either free of charge, or at a reasonable cost.²

Further, no room in a house licensed for the sale of intoxicating liquors may be used as a justices' room for the business of borough justices.³

Bribery and Treating.—Special provisions have been enacted with reference to the election offences of bribery and treating when committed on licensed premises by, or with the consent of, the license holder. Thus, with respect to a person holding a license or certificate under the Licensing Acts, 1872 and 1874, it is provided by the Corrupt Practices Act, 1883,⁴ that the following provisions shall have effect: (a) If it appears to the Court by which any licensed person is convicted of the offence of bribery or treating, that such offence was committed on his licensed premises, the Court shall direct such conviction to be entered in the proper register of licenses; (b) If it appears to an election Court or election commissioner that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such Court or commissioners (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same, and whether such person obtained a certificate of indemnity or not it shall be the duty of the Director of Prosecutions to bring such report before the licensing justices from whom, or on whose certificate, the licensed person obtained his license,

¹ 47 & 48 Vict. c. 70, § 36 (1) (f).

² 56 & 57 Vict. c. 73, § 61

³ 45 & 46 Vict. c. 50, § 160.

⁴ 46 & 47 Vict. c. 51, § 38 (8). See also definition of "Licensing Acts," in § 61, *post*.

and such licensing justices shall cause such report to be entered in the proper register of licenses; (c) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

The above provisions now also apply to bribery and treating at municipal elections,¹ and elections of district councils, improvement commissioners, guardians, and school boards.²

30. Seditious Meeting permitted on Licensed Premises.—

It shall be lawful for any two or more justices of the peace, acting for any county, stewardry, riding, division, city, town, or place, upon evidence on oath that any meeting of any society hereby declared to be an unlawful combination and confederacy, or any meeting for any seditious purpose, hath been held after the passing of this Act, at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, to adjudge and declare the license or licenses for selling ale, beer, wine, or spirituous liquors granted to the person or persons keeping such house, room, or place, to be forfeited; and the person or persons so keeping such house, room, or place, shall, from and after the day of the date of such adjudication and declaration, be subject and liable to all and every the penalties and forfeitures for any act done after that day, which such person or persons would be subject and liable to, if such license or licenses had expired or otherwise determined on that day.³

There is no definition in this Act of the words "seditious meeting." Any meeting held with a seditious intention would presumably be a seditious meeting. A seditious

¹ 47 & 48 Vict. c. 70, § 23.

² *Ibid.*, § 36.

³ 39 Geo. III. c. 79, § 14 (The Unlawful Societies Act, 1799). As to what is an unlawful combination, etc., under this Act, see § 2.

intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of the Sovereign, the government and constitution of the United Kingdom as by law established, either House of Parliament or the administration of justice, or to excite the Queen's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst the Queen's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.¹

A similar forfeiture was enacted by the Seditious Meetings Act, 1817;² but under that Act the seditious meeting must be shewn to have been held with the knowledge and consent of the person keeping the house, room, or place.

¹ Stephen's "Digest of the Criminal Law," edit. 1894, p. 70.

² 57 Geo. III. c. 19, § 29.

PART IV.

PROSECUTION OF OFFENDERS.

SECTION XX.

SUMMARY PROCEDURE.

OFFENCES against the Licensing Acts, 1872 and 1874, and penalties and forfeitures thereunder may be prosecuted and recovered and enforced under the provisions contained in the Summary Jurisdiction Acts. Except in the case of the offences of being found drunk in any highway, or other public place, or in any licensed premises (which may be tried before one justice sitting alone) the Court of summary jurisdiction must, when hearing a charge under the above Acts on an information or complaint, consist either of two or more justices sitting at a place appointed for holding petty sessions, or of a stipendiary magistrate or some other officer for the time being empowered by law to do alone any act otherwise to be done by more than one justice of the peace, sitting alone or with others, at some Court or other place appointed for the administration of justice.¹

Disqualification of Justices.—The disqualifications which make it illegal for justices to act as Licensing Justices at

¹ L. A. 1872, § 51. There is a similar provision in the Metalliferous Mines Act (35 & 36 Vict. c. 77, § 33). See also 23 & 24 Vict. c. 27, § 30.

the general annual licensing meeting apply equally (except in the case of any offence under § 12 of the Licensing Act, 1872¹) to the trial of persons charged with offences under the Licensing Acts, 1872 and 1874, and the Wine and Beer-house Acts, 1869 and 1870.² Therefore no justice who is, or is in partnership with, or holds any share in any company which is, a common brewer, distiller, maker of malt for sale, or retailer of malt, or of any intoxicating liquor, in the licensing district or districts adjoining that in which he usually acts, may lawfully try such offences.

Disqualification attaches also in the above excepted case if the offence has been committed in respect of premises in the profits to which the justice is interested or of which he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent. His interest therein must however be beneficial and not merely legal.

If a disqualified justice takes part in the trial of an offence he becomes liable to the statutory penalty, but does not invalidate the finding of the Court.³

Area of Jurisdiction.—By the Summary Jurisdiction Act, 1879,⁴ it is provided that :—

“For the purposes of the trial of any offence punishable on summary conviction under this Act or under any other Act, whether past or future, the following provisions shall have effect :—

“(1) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or other, which runs between or forms the boundary of the jurisdiction of two or more Courts of summary jurisdiction, such offence may be tried by any one of such Courts.

¹ *I.e.* an offence of being found drunk on a highway or public place or licensed premises, or being guilty while drunk of riotous or disorderly behaviour in such place, or drunk while in charge of a carriage, etc., or while in possession of loaded firearms.

² L. A. 1872, § 60. This section applies to all offences under the “Intoxicating Liquor Licensing Acts.” It should be noticed that these Acts do not, as defined (§ 74), include the Beerhouse Acts, 1830, 1834, and 1840. They include the Alehouse Act 1828, but the sections of that Act creating offences are now repealed. See also L. A. 1874, § 1.

³ L. A. 1872, § 60.

⁴ 42 & 43 Vict. c. 49, § 46.

“(2) Where the offence is committed on the boundary of the jurisdiction of two or more Courts of summary jurisdiction, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one Court and completed within the jurisdiction of another Court of summary jurisdiction, such offence may be tried by any one of such Courts.”

“(4) Any offence which is authorised by this section to be tried by any Court of summary jurisdiction may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the jurisdiction of such Court.”¹

By § 61 of the Licensing Act, 1872, “any pier, quay, jetty, mole, or work extending from any place within the jurisdiction of a Court of summary jurisdiction into or over any part of the sea, or any part of a river within the ebb and flow of the tide, shall be deemed to be within the jurisdiction of such Court.”

Procedure—Summons on Information.—The defendant is brought before the Court by a summons issued upon an information or complaint laid against him. The information may be laid before one justice,¹ it must be for one offence only, and should be laid (unless otherwise expressly provided) within six calendar months from the offence.²

The summons must state shortly the matter of the information, and require the attendance of the defendant at a time and place named therein to answer the information.³ If the defendant is a license holder, and the offence for

¹ 11 & 12 Vict. c. 43, § 29.

² *Ibid.*, § 10. In some cases, where proceedings are to be taken under the Summary Jurisdiction Acts, a different rule prevails. Under the Food and Drugs Acts, proceedings must be taken in the case of a perishable article within twenty-eight days, in all other cases within a reasonable time of the sale complained of (see Act of 1879, § 10). In a case against a warrantor the limit of time is a reasonable time only; *Cook v. White*, [1896] 1 Q. B. 284. In offences against the Coal Mines and Metalliferous Mines Acts, the complaint must be laid within three months; 50 & 51 Vict. c. 58, § 62 (1); 35 & 36 Vict. c. 77, § 34; see also penalties under 23 & 24 Vict. c. 27, § 30. A summons must, in a case of alternative offences, state which is charged; *Cotterill v. Lempriere*, 24 Q. B. D. 637; 59 L. J. Q. B. 133; 54 J. P. 583; 6 T. L. R. 262.

³ 11 & 12 Vict. c. 43, § 1.

which he is summoned is one liable to be endorsed on the license, the summons should give him notice to produce his license at the hearing of the charge.¹

The summons must be served personally upon the defendant, or left at his last and most usual place of abode.²

The description of any offence in the words of the Act (or any order, bye-law, regulation, or other document creating the offence) or in similar words is sufficient. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation or other document creating the offence may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived no proof in relation to the matter so specified or negatived shall be required on the part of the informant.³ Thus where the defendant is charged with some act which would not be an offence if he were duly licensed, the burden of proving that he was so licensed is upon him.⁴

Hearing of the Summons.—No objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons, and the evidence adduced on the part of the informant at the hearing of such information. But if the justices at the hearing think that such variance has deceived or misled the defendant, they may adjourn the hearing of the case to some future day.⁵

The variance here mentioned is not such variance as discloses a totally different and distinct offence. Thus it has been held that magistrates acted without jurisdiction

¹ L. A. 1872, § 55. In the case of proceedings under the Food and Drugs Acts, particulars of the offence and the name of the prosecutor must be stated in the summons, which must not be made returnable in a less time than seven days from the day of service (42 & 43 Vict. c. 30, § 10); and this is a condition precedent (*Dixon v. Wells*, 25 Q. B. D. 249; 59 L. J. M. C. 116; 54 J. P. 725). Defective particulars may be cured, however, by showing that accused had notice otherwise (*Neal v. Devenish*, [1894] 1 Q. B. 544; 58 J. P. 246; 10 T. R. 313; *R. v. Wakefield*, 54 J. P. 148).

² 11 & 12 Vict. c. 43, § 1.

³ 42 & 43 Vict. c. 49, § 39.

⁴ *Turner v. Johnson*, 51 J. P. 22.

⁵ 11 & 12 Vict. c. 43, § 1

who convicted a defendant of an offence under a statute different from the statute creating the offence for which he was summoned.¹

Any variance between an information and the evidence adduced in support of it as to the time of the committal of the offence, or as to the parish or township in which it was committed, is not material if such information has in fact been laid within the time limited in law for laying the same, or the parish or township where the offence is proved to have been committed is within the actual jurisdiction of the justices hearing the charge. But in this case, also, the Court may adjourn the hearing if the defendant has been misled.²

In all summary proceedings against offenders under the Licensing Acts, 1872 and 1874, the defendant and his wife are competent to give evidence.³

If the defendant disobeys the summons the magistrates may, on proof being given that he was served therewith a reasonable time before the hearing, proceed to hear and determine the case in his absence, or they may issue a warrant for his apprehension.⁴ Where a person is charged with an offence which on summary conviction would render him liable to be imprisoned for a term exceeding three months (and which is not an assault) he may, on appearing before the Court, claim before the charge is gone into, but not afterwards, to be tried by a jury, and, if he does so, the Court must deal with the case in all respects as if the accused were charged with an indictable offence.⁵

Recording Convictions. — Convictions against license

¹ *R. v. Brickhall*, 33 L. J. M. C. 156. See also *Martin v. Pridgeon*, 23 J. P. 630; 1 E. & E. 778; 28 L. J. M. C. 179; 7 W. R. 412.

² 11 & 12 Vict. c. 43, § 9.

³ L. A. 1872, § 51 (4). See *Seager v. White*, 48 J. P. 436; 51 L. T. 261. The defendant and his wife are also admissible witnesses under the Food and Drugs Acts (38 & 39 Vict. c. 63, § 21); so, too, the defendant and husband or wife under the Corrupt Practices Act (46 & 47 Vict. c. 51, § 53). Under the Coal Mines Act the defendant may give evidence (50 & 51 Vict. c. 58, § 62); under the Metalliferous Mines Act, the owner or agent, if charged, may give evidence (35 & 36 Vict. c. 77, § 34); and under the Prevention of Cruelty to Children Act the defendant and his or her wife or husband are admissible witnesses (57 & 58 Vict. c. 41, § 12).

⁴ 11 & 12 Vict. c. 43, §§ 2, 13.

⁵ 42 & 43 Vict. c. 49, § 17.

holders are required to be entered in the Register of Licenses, and certified copies of the entries purporting to be signed by the clerk are receivable in evidence to prove such convictions.¹

Further, the clerk of every Court of summary jurisdiction is required to keep a register of the convictions and orders of his Court. This register, or a certified extract therefrom, is *primâ facie* evidence of the matters entered therein for the purpose of informing a Court of summary jurisdiction, acting for the same county, borough, or place; but this provision does not dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.²

A conviction for any offence under the Licensing Acts, 1872 and 1874, shall not, after five years from the date of such conviction, be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture.³

Endorsing License.—Under the Licensing Act, 1872, convictions of certain offences were required to be recorded on the license or certificate of the offender,⁴ while in other cases the magistrates had a discretion to direct that the conviction should not be recorded.⁵ Now, however, the justices have, as regards all offences which are liable under the Licensing Acts, 1872 and 1874, to be endorsed upon a license or certificate, a discretion as to whether the endorsement shall be made or not.⁶ In deciding whether or not the license is to be endorsed, the justices ought to consider the entries in the register of licenses relating to the license in question. A declaration by the Court that a record of an offence is to be made on a license is deemed to be part of the conviction or order of the Court in reference to such

¹ L. A. 1872, §§ 36, 58. As to register of justices' licenses, see *ante*, p. 67.

² 42 & 43 Vict. c. 49, § 22. See also 34 & 35 Vict. c. 112, § 18.

³ L. A. 1872, § 32, and L. A. 1874, § 1. It will be noticed that this section does not give relief as to disqualifications.

⁴ See §§ 5, 6.

⁵ See §§ 13, 14, 16, 17, 28.

⁶ L. A. 1874, §§ 13, 33. See also L. A. 1872, § 57. All offences against the Licensing Act, 1874, are liable to be endorsed on a license, see § 13.

offence, and is subject accordingly to the jurisdiction of the Court hearing the appeal.¹

Where a licensed person is charged with an offence which is liable, on conviction, to be endorsed on his license or certificate, the Court before whom the charge is heard may require such person to produce and deliver to the clerk of the Court the license or certificate under which such person carries on business. Hence notice requiring the production thereof should, as above mentioned, be given to the defendant in the summons.²

Where the Court directs the conviction to be recorded on the license, the short particulars of the offence and the penalty imposed are a sufficient record.³

Every endorsement upon a license is evidence of the matters stated in such endorsement.⁴

Where the Court has directed that a conviction is to be recorded upon the license or certificate of an offender, all the consequences of such a record attach, whether the record is made in fact or not. Therefore, if in the case of an omission to so record a conviction, the conviction and direction requiring it to be recorded are otherwise proved to the satisfaction of a Court having cognisance of any case under the Licensing Acts, the person and the premises in question are liable to the like penalty to which they would have been liable if the record had been duly made. Further on, such proof being given, the omitted conviction may then be recorded; and when so recorded shall be deemed to have been duly recorded.⁵

Any person who defaces or obliterates, or attempts to deface or obliterate, any record of a conviction on his license or certificate renders himself liable to a penalty not exceeding £5.⁶

¹ L. A. 1874, § 13. ² L. A. 1872, § 55. ³ Ibid. ⁴ Ibid., § 58.

⁵ Ibid., § 33; L. A. 1874, § 13. In a recent case before the Middlesex Quarter Sessions, it was held that the circumstance that a license had not been in fact endorsed (pending the appeal) did not prevent the sessions affirming the endorsement as well as the conviction. *Galopin v. Parson*, 61 J. P. 184.

⁶ L. A. 1872, § 34. In *Fordham v. Penge Justices*, 60 J. P. 267; a case recently heard before the County of London Sessions, the magistrates held that where a person was convicted of three recordable offences on three separate summonses, all heard on the same day, all three offences could not be recorded on his license.

Penalties—how enforced.—Under the Summary Jurisdiction Act, 1879, and under the Licensing Act, 1874, power is given to the Court to mitigate penalties. The former of those Acts provides, where a Court of summary jurisdiction can impose imprisonment or fine, that Court may impose the imprisonment without hard labour and reduce the prescribed period, or do either of those acts, and in case of fine, if in respect of a first offence, may reduce the prescribed amount.¹

By § 12 of the Licensing Act, 1874, when any person holding a license under the Licensing Acts, 1872 and 1874, is convicted of any offence against those Acts, or against any of the Acts recited or mentioned therein, the Court may not, except in the case of a first offence, reduce the penalty to less than twenty shillings; nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorised by any other Act.

Distress Warrant.—If the penalty imposed is not paid the justices may issue a warrant of distress for the sale of the defendant's goods.² It is in the discretion of the Court to allow the defendant to go at large or to order him to be kept in custody till the levy is made.³ If on the return of the warrant of distress it appears that no goods or not sufficient goods of the defendant can be found to satisfy the penalty the justice before whom the return is made may commit the defendant to prison.⁴ The period of such imprisonment is to be such as in the opinion of the Court will satisfy the justice of the case, but it is in no case to exceed the maximum fixed by the following scale:

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as as- certained by the conviction—			The said period shall not exceed—
Does not exceed 10s.	...	...	... 7 days.
Exceeds 10s. but does not exceed £1	...	...	... 14 days.
Exceeds £1 but does not exceed £5	...	...	... 1 month.
Exceeds £5 but does not exceed £20	...	...	... 2 months.
Exceeds £20	...	...	... 3 months.

¹ 42 & 43 Vict. c. 49, § 4. Not, however, below the minimum for a first offence enacted by the statute imposing the penalty: see *Osborne v. Wood*, L. R. [1897] 1 Q. B. 197. The Crown, under 22 Vict. c. 32, may remit in whole or in part any penalty or forfeiture imposed on a convicted offender.

² 11 & 12 Vict. c. 43, § 19.

³ *Ibid.*, § 20.

⁴ *Ibid.*, § 21.

and such imprisonment shall be without hard labour except where hard labour is authorised by the Act on which the conviction is founded, in which case the imprisonment, may, if the Court thinks the justice of the case requires it, be with hard labour so that the term of hard labour awarded do not exceed the term authorised by such Act.¹

The Court may, however, allow the defendant time for the payment of the sum adjudged to be paid by him, or allow payment to be made by instalments, or permit him to give security with or without a surety or sureties for the payment of the sum or of any instalment thereof.²

The wearing apparel and bedding of any person and his family, and the tools of his trade to the value of £5, shall not be taken under a distress issued by a Court of summary jurisdiction.³

Imprisonment.—Instead of issuing a distress warrant, the Court may, if satisfied that the defendant has no goods or no sufficient goods to satisfy the distress, or that the levying of the distress will be more injurious to him or his family than imprisonment, order him to be imprisoned; and where part of the sum adjudged payable by the defendant has been paid or satisfied by the net proceeds of a distress, so that the unsatisfied balance, if it had constituted the original amount, would have subjected the defendant to a maximum term of imprisonment less than that to which he is liable under his convictions, the Court shall by its warrant of commitment revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction or order.⁴

Costs of Proceedings.—Where, in the opinion of the Court, the charge before it, although proved, is of a trifling nature, and the Court thinks it inexpedient to inflict punishment, or more than nominal punishment, the Court may either, (1) without proceeding to conviction, dismiss the information, ordering the person charged, if they think fit, to pay such damages, not exceeding forty

¹ 42 & 43 Vict. c. 49, § 5.

² *Ibid.*, § 7.

³ *Ibid.*, § 21.

⁴ *Ibid.*

shillings, and such cost of the proceeding, or either of them, as the Court may think reasonable; or (2), upon conviction of the offender, discharge him conditionally on his giving security with or without sureties to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the Court think reasonable.¹

The Court may order the defendant to pay the costs of the prosecutor, and, where the information is dismissed, the prosecutor to pay the defendant's costs.²

Where the fine imposed by the Court does not exceed five shillings, no order for the payment of the informant's costs by the defendant should generally be made; but all fees payable by the informant should be remitted or repaid to him, and the fine or any part of it may be ordered to be paid to the informant in or towards the payment of his costs.³

Costs ordered to be paid by a defendant are recoverable by distress, and, in default of such distress, by imprisonment.⁴ But where costs are ordered to be paid by an informant on dismissal of an information, they are recoverable by civil debt procedure.⁵

By § 51 of the Licensing Act, 1872, it is provided, "Where, under this Act, any sum for costs (other than costs upon a conviction or order of dismissal of an information) or for compensation, or both, is ordered or awarded to be paid by any person, the amount thereof shall be recovered in manner directed by the Summary Jurisdiction Act, 1848, for the recovery of costs awarded upon the dismissal of an information, or complaint—*i.e.* now by civil debt procedure as provided by the Summary Jurisdiction Act, 1879, § 47.⁶

Forfeitures of Licenses and Disqualification of Premises.—

¹ 42 & 43 Vict. c. 49, § 16.

² 11 & 12 Vict. c. 43, § 18.

³ 42 & 43 Vict. c. 49, § 8.

⁴ 11 & 12 Vict. c. 43, §§ 19, 21.

⁵ 11 & 12 Vict. c. 43, §§ 18, 26; 42 & 43 Vict. c. 49, § 47. *Ex parte Boaler*, 57 J. P. 633; 9 T. L. R. 508.

⁶ See 11 & 12 Vict. c. 43, § 26; also 42 & 43 Vict. c. 49, §§ 47, 55.

The effect of forfeiture is to reduce the premises to the condition of unlicensed premises.¹ Where a justices' license or certificate is forfeited or becomes void under the Licensing Acts, 1872 and 1874, any excise liquor license granted to the holder thereof becomes void also.² On a conviction, followed by forfeiture or disqualification (either of person or premises), the justices' license or certificate held by the offender ought to be retained by the clerk of the Court, and sent by him (unless he himself is such clerk) to the clerk to the licensing justices, with notice of the forfeiture or disqualification. Notice should also be sent to the licensing officer of the district.³ The penalty for not producing a justices' license or certificate, or an exemption order, within a reasonable time, when the same is demanded by a justice, constable, or officer of Inland Revenue, is a sum not exceeding £10.⁴

Protection of Owner.—On the conviction of the tenant of any licensed premises of an offence against the Licensing Acts which would on repetition render the premises liable to disqualification, the clerk of the licensing justices is required to serve notice of such conviction upon the owner of the premises.⁵ This is for the protection of the owner, in order that he may have the opportunity of getting rid of a tenant whose past conduct makes it probable that, if left in possession, he may commit a second offence, which will disqualify the premises.

Where, by order of a Court of summary jurisdiction, licensed premises of which the owner is not the occupier are declared disqualified for any period of time, such owner is entitled to be heard against the order.⁵

¹ *R. v. West Riding Justices*, 21 Q. B. D. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258.

² L. A. 1872, § 63.

³ *Ibid.*, § 55 (5).

⁴ *Ibid.*, § 64.

⁵ L. A. 1872, § 56. Any notice of an offence required by the Licensing Act, 1872, to be sent to the owner of licensed premises, must be either served personally or sent by registered letter. For the purpose of such service the owner is required to supply his address to the clerk or person required to send such notice, and any notice sent to such address is duly served. If no address is supplied, the notice is properly served if sent to any address which the clerk or such person believes in his discretion to be the address of the owner. L. A. 1872, § 70.

The order must, therefore, be served upon the owner with a statement of the time when, and the place where, the Court will hold a petty session to hear the owner's appeal against the disqualifying order, and also of the three grounds of appeal of any or all of which the owner may avail himself.

Grounds of Appeal by Owner.—The three grounds of appeal open to an owner against an order disqualifying his premises are as follows:¹—(1) That the above-mentioned notice of a conviction of his tenant, which, on repetition, would disqualify the premises, has not been served upon him: (2) That the tenant by whom the offence was committed held, under a contract made prior to the 10th of August, 1872, and that the owner could not legally have evicted such tenant in the interval between the commission of the offence in respect of which the disqualifying order was made, and the receipt by him of the notice of the immediately preceding offence which, on repetition, would render the premises liable to disqualification: (3) That the offence in respect of which the disqualifying order was made occurred so soon after the receipt of such last-mentioned notice that the owner, notwithstanding he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval that occurred between the said notice and the second offence.

If the owner, upon the hearing of the appeal at the stated session or any adjournment thereof, satisfies the Court that he is entitled to have the order cancelled on any of the above grounds, the Court shall thereupon direct such order to be cancelled, and the same shall be void.¹

Application of Penalties and Forfeitures.—Penalties, when paid, are to be applied according to the directions of the statute on which the information or complaint was framed.²

¹ L. A. 1872, § 56.

² S. J. Act, 1848 (11 & 12 Vict. c. 43, § 31). If there is no direction they go to the treasurer of the county or borough, as the case may be, if such borough has a separate Court of Quarter Sessions; see *Winn v. Mossman*, L. R. 4 Ex. 292; 38 L. J. Ex. 200; 33 J. P. 743; *Reigate v. Hart*, L. R. 3 Q. B. 244; 37 L. J. M. C. 70; 32 J. P. 342; 16 W. R. 896.

By § 66 of the Licensing Act, 1872, it is provided that any part not exceeding a moiety of any *penalty* recovered under this Act may, if the Court shall so direct, be paid to the superannuation fund of the police establishment within whose jurisdiction the offence in respect of which such penalties are imposed shall have occurred. By § 51 of the same Act, all *forfeitures* shall be sold or otherwise disposed of in such manner as the Court may direct, and the proceeds of such sale or disposal (if any) shall be applied in the like manner as penalties, but the Court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture.

Further, such penalties and forfeitures shall not, for the purpose of any Act respecting the application of such penalties or of the costs, charges, and expenses attending proceedings for the recovery of such penalties or of forfeitures, be deemed to be penalties or forfeitures under any Act relating to the Inland Revenue.

Any officer appointed by the Commissioners of Inland Revenue may sue for any penalties under the Act, and when so sued for, penalties recovered shall be applied in the same manner as excise penalties.

In boroughs with separate Courts of Quarter Sessions, the Municipal Corporations Act, 1882,¹ directs penalties and forfeitures recoverable in a summary manner to be paid to the treasurer of the borough, unless the Act under which they are paid directs payment (*a*) to the informer or any person aggrieved, or (*b*) (if passed since the Municipal Corporations Act, 1835,) in any other manner and not to borough funds, or lastly, (*c*) if such Act relates to the customs, excise, or post-office, or to trade or navigation, or to any branch of the revenue of the Crown.²

With reference to the Licensing Acts, § 16 of the Police

¹ 45 & 46 Vict. c. 50, § 221.

² As to boroughs with less than 10,000 inhabitants being now parts of counties, see 51 & 52 Vict. c. 51, § 39; *Ex parte Kent* [1891], 1 Q. B. 389; 60 L. J. Q. B. 314; 55 J. P. 248; *Hereford v. Leominster* [1895], 1 Q. B. 389; 59 J. P. 38.

Act, 1890,¹ now provides—unless the authority having control of the fund, to which the sums hereinafter mentioned would but for this section be carried, otherwise resolve, the fines imposed by a Court of summary jurisdiction for offences under the Licensing Acts, 1872 and 1874, when committed within the *police area*, or for any offence under a general or local Act similar to any of the above offences, shall be carried to the police pension fund.

And by the same Act it is further provided that the provisions of this section shall have effect notwithstanding anything in any charter or in any other Act, whether relating to municipal corporations or otherwise.²

Offender to be punished once only.—By § 59 of the Licensing Act, 1872, it is provided, “nothing in this Act shall prevent any person from being liable to be indicted or punished under any other Act, or otherwise, so that he be not punished twice for the same offence.”³

Under the Interpretation Act, 1889,⁴ a like general provision has been enacted as follows, “Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.”

At the same time two offences may apparently arise out of the same acts, as *e.g.* a general statutory offence and an offence against the revenue.⁵

¹ 53 & 54 Vict. c. 45, § 16.

² In this Act the expression “police area” includes—the metropolitan police district; a county; a borough; a town not being a borough and maintaining a separate police force under any local Act of Parliament; and the river Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners (see § 33).

³ Cf. *Wemyss v. Hopkins*, L. R. 10 Q. B. 378; 44 L. J. M. C. 101; 39 J. P. 549; 32 L. T. 9; 23 W. R. 691; *Eddleston v. Barnes*, 1 Ex. D. 67; 45 L. J. M. C. 73; 40 J. P. 89; 34 L. T. 497; *Sims v. Pay*, 58 L. J. M. C. 39; 53 J. P. 420.

⁴ 52 & 53 Vict. c. 63, § 33.

⁵ *Saunders v. Baldy*, L. R. 1 Q. B. 87; 6 B. & S. 791; 30 J. P. 148; 14 W. R. 177; 13 L. T. 322.

SECTION XXI.

APPEALS AGAINST CONVICTIONS.

Remedies of Convicted Persons by Way of Appeal.—The general rule of law is that no appeal lies against a conviction unless expressly given by statute.¹ In the case of nearly all offences connected with the sale of intoxicating liquors which are punishable on summary conviction, a right of appeal to Quarter Sessions has been given.² With reference to offences under the Licensing Acts, 1872 and 1874, § 52 of the former of these Acts provides that any person who feels aggrieved by any order of any Court of summary jurisdiction may appeal therefrom to the next Court of Quarter Sessions.

A right of appeal to Quarter Sessions is also given by the Food and Drugs Act,³ the Mines Acts,⁴ the Corrupt Practices Act,⁵ the Prevention of Cruelty to Children Act,⁶ the Prevention of Crimes Act,⁷ the Betting Act,⁸ and by the Refreshment Houses Act in certain cases.⁹

By § 33 of the Summary Jurisdiction Act, 1879,¹⁰ it is further provided that any person aggrieved who desires to

¹ *R. v. Hanson*, 4 B. & Ald. 521, per Abbott, C.J.

² Under the S. J. Act, 1879, a general right of appeal is given in all cases where imprisonment without the option of a fine is imposed on summary conviction—if the defendant does not plead guilty; see § 19. These appeals are not confined to County Quarter Sessions.

³ 38 & 39 Vict. c. 30, § 23.

⁴ 35 & 36 Vict. c. 77, § 34; 50 & 51 Vict. c. 58, § 63.

⁵ 46 & 47 Vict. c. 51, § 54.

⁶ 57 & 58 Vict. c. 41, § 19.

⁷ 39 & 40 Vict. c. 20, § 5.

⁸ 16 & 17 Vict. c. 119, § 13.

⁹ 23 & 24 Vict. c. 27, § 34.

¹⁰ 42 & 43 Vict. c. 49. See also 20 & 21 Vict. c. 43. A special case is stated under both of these Acts. *Price v. James*, [1892] 2 Q. B. 437, 438.

question a conviction order, determination, or other proceeding of a Court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the Court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the Court decline to state such case may apply to the High Court of Justice for an order requiring the case to be stated. Thus, a person convicted, in addition to any right of appeal he may have to Quarter Sessions, has also a right of appeal by special case to the High Court. These remedies, however, are alternative only, and the defendant must elect which he will pursue.¹

By an appeal to Quarter Sessions the appellant obtains the decision of another Court alike on fact and law. But if that decision is adverse to him he has no further remedy, unless the Quarter Sessions consent to state a case for the opinion of the High Court. On the other hand, if he elects to demand a case from the Petty Sessions, he has the advantage of obtaining the opinion of the High Court upon the law applicable to his case, but he is bound by the facts as the magistrates find and state them.

Who may appeal.—Under the Licensing Act, 1872, the appeal lies by any person aggrieved. Any person who has been convicted of an offence is a person aggrieved. But a prosecutor who fails to obtain a conviction is not, and no appeal lies by such person against a refusal of magistrates to convict.² A person aggrieved means a person directly aggrieved, and not merely indirectly so; therefore an appeal does not lie by the owner of a licensed house against the conviction of his tenant, even although such conviction may be most prejudicial to the premises. In *R. v. Andover Justices*,³ Mathew, J., said, "I am of opinion

¹ See 42 & 43 Vict. c. 49, § 33; 20 & 21 Vict. c. 43, § 14. *Shackell v. West*, 29 L. J. M. C. 45; 24 J. P. 22; 6 Jur. 95; 1 L. T. 28; 2 E. & E. 326.

² *Payne v. Uxbridge*, 45 J. P. 327, 420; *R. v. London Justices, ex parte Fulham Vestry*, 25 Q. B. D. 357; 59 L. J. M. C. 146; 55 J. P. 56; 34 Sol. J. 586. There is, however, an exception to this rule in the case of an excise officer: see 7 & 8 Geo. IV. c. 53, § 82; 4 & 5 Wm. IV. c. 51, § 23.

³ 16 Q. B. D. 711; 55 L. J. M. C. 143; 50 J. P. 549; 55 L. T. 33; 34 W. R. 456.

that § 52 applies to a person directly aggrieved by the order, and that a person who, like this owner, feels himself aggrieved by the order cannot appeal against it. Any other interpretation would lead to most preposterous consequences, for then, not only the owner, but a mortgagee, or a creditor of the tenant, or a creditor of the owner might each feel himself aggrieved, and claim to appeal against the order, so that there would be scarcely any limit to the appeals which might be brought."

Appeal to Quarter Sessions—Notice.—All appeals from orders of Courts of summary jurisdiction must now be made subject to the provisions of the Summary Jurisdiction Act, 1879, Baines' Act¹ being repealed so far as such appeals are concerned.²

The appeal is to the next Court of Quarter Sessions, held not less than fifteen days after the decision appealed from.³ The appellant must, within seven days from the conviction or order, give notice in writing of his intention to appeal.⁴ This notice must state the grounds of his appeal, and be signed by himself or his agent on his behalf. No special form of notice is required. The notice must be served on the other party, and on the clerk of the Court of summary jurisdiction from which the appeal is made.⁴ It is sufficiently served if sent by a registered letter through the post, and, if so sent, is deemed to be served at the time when it would be delivered in the ordinary course of post.⁵ Within three days after the day on which he gave notice of appeal the appellant must enter into a recognisance before a Court of summary jurisdiction, with or without a surety or sureties as such Court may direct, to appear at the hearing of the appeal, and abide the judgment and pay such costs as may be then awarded.⁶ Instead of

¹ 12 & 13 Vict. c. 45.

² 47 & 48 Vict. c. 43, § 6 and schedule.

³ 42 & 43 Vict. c. 49, § 31 (1).

⁴ *Ibid.*, § 31 (2), (7). *Ex parte Hawkins*, 64 L. J. M. C. 192; *R. v. Essex Justices*, [1892] 1 Q. B. 490. In computing days of notice Sundays are to be included unless excepted by statute. *Ex parte Simpkin*, 29 L. J. M. C. 23; 24 J. P. 262; 2 E. & E. 392; 6 Jur. (N.S.) 144; *R. v. Middlesex Justices*, 17 L. J. Q. B. 111; 5 D. & L. 580; 11 L. T. 132; 12 Jur. 434.

⁵ 42 & 43 Vict. c. 49, § 31 (7).

⁶ *Ibid.*, § 31 (3). *R. v. Cheshire Justices*, 60 J. P. 585. The recognisance

requiring the appellant to enter into a recognisance, the Court may require him to make such deposit of money with the clerk by way of security as it shall deem sufficient.¹

Hearing at the Sessions.—The appeal is by way of rehearing, and neither party is confined to the evidence given below.² On the appeal it is for the respondent to begin and prove his case *de novo*. Therefore, if the respondent does not appear, the appellant on proving his notices³ is entitled to have the order appealed against quashed; for in such case there is no evidence before the Court to support a conviction.⁴

The Court of Quarter Sessions may adjourn the hearing of the appeal; and upon the hearing thereof, may confirm, reverse, or modify the decision of the Court of summary jurisdiction, or remit the matter, with the opinion of the Quarter Sessions thereon, to a Court of summary jurisdiction acting for the same county, borough, or place as the Court by whom the conviction or order appealed against was made, or may make such other order in the matter as the Court of appeal may think just, and may by such order exercise any power which the Court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the Court of summary jurisdiction.⁵

If the Quarter Sessions, sitting as such Court of appeal, do not confirm the decision below, the clerk of the peace shall indorse on the conviction or order appealed from a

may be entered into before any Court of summary jurisdiction, whether acting for the same county as the Court from whose order the appeal is brought or not. *R. v. Durham Justices*, [1895] 1 Q. B. 801; 64 L. J. M. C. 187; 59 J. P. 264; 72 L. T. 465; 43 W. R. 423.

¹ In deciding what is a sufficient security, the Court ought to have before it the notice and grounds of appeal. *R. v. Anglesey Justices*, [1892] 2 Q. B. 29; 61 L. J. M. C. 143; 56 J. P. 552; 8 T. L. R. 561; 67 L. T. 322; *R. v. Cheshire Justices*, 60 J. P. 585.

² *R. v. Suffolk Justices*, 1 B. & Ald. 646; *R. v. Pilgrim*, L. R. 6 Q. B. 89; 40 L. J. M. C. 3; 19 W. R. 99; 23 L. T. 410.

³ The notices are a condition precedent to the appeal, and must be in order. *R. v. Bristol Justices*, 57 J. P. 486; 68 L. T. 225.

⁴ See *Whiffen v. Bligh*, 56 J. P. 375; 61 L. J. M. C. 85; *R. v. Surrey Justices*, [1892] 2 Q. B. 721; 61 L. J. M. C. 200.

⁵ 42 & 43 Vict. c. 49, § 31 (5).

memorandum of the decision of the Court of appeal, and shall also send a memorandum thereof to the clerk of the Court of summary jurisdiction for entry in his registry. And whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in any case where such copy or certificate would be sufficient evidence of such conviction or order.¹

The decision of the Quarter Sessions in any appeal against a conviction is final and conclusive; and where the sessions have tried an appeal within their jurisdiction, however erroneous their determination in law and fact may be, the High Court will not interfere to disturb it, unless the Quarter Sessions invite the opinion of the Court by granting a case.² Whether or not they will grant a case upon an appeal heard by them is entirely in the discretion of the justices.³

Costs of the Appeal.—The Court of Quarter Sessions may make such order as to costs to be paid by either party as the Court may think just. Costs are to be paid to the clerk of the peace within a specified time, and thereafter by him paid over to the party entitled to them.

If a party ordered to pay costs, who is not bound by any recognisance in respect of their payment, does not pay the costs so ordered to be paid by him, the party entitled to such costs may obtain from the clerk of the peace a certificate that they have not been paid, and, on production thereof to a justice, may enforce payment by a warrant of distress.⁴

Appeal to the High Court by Special Case.—Where an intending appellant desires to appeal to the High Court, he must apply to the justices at petty sessions who heard his case, to state a case for the opinion of the High Court,

¹ 42 & 43 Vict. c. 49, § 31 (6).

² Notwithstanding § 54 of the Licensing Act, 1872, certiorari still lies to quash a conviction where an inferior Court has acted without jurisdiction or fraudulently; *Colonial Bank of Australia v. Willan*, L. R. 5 P. C. 442. As to this remedy, see *ante*, p. 65.

³ *R. v. Chantrell*, L. R. 10 Q. B. p. 587; *R. v. Suffolk Justices*, Dowl. 163; *R. v. Jarvin*, 9 Dowl. 120.

⁴ 11 & 12 Vict. c. 43, § 27.

setting forth the facts and the grounds on which the proceeding is questioned.

The application to the justices to state a case must be in writing, and must be made within seven clear days from the date of the proceeding to be questioned.¹

The appellant need not state his point of law in applying.² The application must be served personally on, or left at the residence of, each of the justices who heard the case; a copy must also be served on their clerk.³ These preliminaries are essential, and unless complied with the High Court has no jurisdiction to entertain the appeal.⁴ If the justices decline to state a case, the appellant may apply to the High Court for an order requiring them to do so.⁵ But the justices are entitled to refuse a frivolous application for a case.⁶ The appellant before he receives the case from the justices must enter into a recognisance, with or without sureties, and in such sum as to the justices shall seem meet, to prosecute the appeal without delay, and pay such costs as may be awarded by the Superior Court. He must at the same time pay to the clerk the required fees. The recognisance may be entered into before the original Court, or before any justice or justices exercising the like jurisdiction.⁷ The justices are required to state the case within three calendar months of the application therefor.⁸ Within three days after receiving the case the appellant must transmit it to the Crown Office.⁹ But before doing so he must give notice in writing of his appeal, with a copy of

¹ 42 & 43 Vict. c. 49, § 33; S. J. Rules (1886), r. 18. In computing these days Sunday must be counted. *Peacock v. R.*, 27 L. J. C. P. 224; 6 W. R. 517; 22 J. P. 403; 31 L. T. (O.S.) 101; 4 C. B. (N.S.) 264; *Wynne v. Ronaldson*, 29 J. P. 566; 13 W. R. 899; 12 L. T. 711.

² *R. v. Newton*, 43 J. P. 351.

³ Written application, to two of five acting justices, and a case stated by those two was held insufficient; see *Westmore v. Paine*, [1891] 1 Q. B. 482; 55 J. P. 440; 64 L. T. 55.

⁴ *South Staffordshire Justices v. Stone*, 19 Q. B. D. 168; 56 L. J. M. C. 122; 51 J. P. 662; 57 L. T. 368; 36 W. R. 76; *Lockhart v. St. Albans*, 21 Q. B. D. 188; 57 L. J. M. C. 118; 52 J. P. 420; 36 W. R. 420.

⁵ 20 & 21 Vict. c. 43, § 5; *Stanhope v. Thoresby*, L. R. 1 C. P. 423; 35 L. J. M. C. 182; 30 J. P. 342.

⁶ 20 & 21 Vict. c. 43, § 4.

⁷ *Ibid.*, § 3.

⁸ S. J. Rules (1886) r. 18.

⁹ 20 & 21 Vict. c. 43, § 2; incorporated with S. J. Act, 1879, § 33 (2).

the case stated, to the other party to the proceedings.¹ Serving the respondent with a copy of the case before it is sent to the Crown Office is a condition precedent to the hearing of the appeal by the High Court.²

It would seem, however, that the above conditions will have been sufficiently complied with if the appellant has done all he could do to perform them.³ In *Mayer v. Harding* the offices of the Court were closed from Friday till the following Wednesday; the appellant having received the case on the Friday, lodged it on the following Wednesday, and this was held sufficient under the circumstances.⁴ In computing the number of days, Sundays are to be included.⁵

Where the appeal has been abandoned or where the conditions have not been sufficiently complied with to enable the High Court to entertain the appeal, the Court still has jurisdiction to give the respondent his costs.⁶

The justices cannot state a case if they decline to hear the application as beyond their jurisdiction.⁷ But it is otherwise if they hear the case, and decide they have no jurisdiction.⁸ And although the High Court may order a case to be stated where the justices have refused one, this will not be done if the point evolved is frivolous,⁹ nor unless it appears that the justices have gone wrong in law.¹⁰

¹ 20 & 21 Vict. c. 43, § 2; incorporated with S. J. Act, 1879, § 33 (2).

² *Edwards v. Roberts*, [1891] 1 Q. B. 302; 60 L. J. M. C. 6; 55 J. P. 439.

³ *Woodhouse v. Wood*. "A condition precedent has been held to be complied with, where it was impossible to perform it." Per Blackburn, J., 29 L. J. M. C. 150; see 23 J. P. 759; 1 L. T. 59. See, also, *Morgan v. Edwards*, 29 L. J. M. C. 108; 24 J. P. 245; *Mayer v. Harding*, L. R. 2 Q. B. 410; 31 J. P. 376; 16 L. T. 429.

⁴ But otherwise if the delay is due to the negligence of an agent. *Bankes v. Goodwin*, 27 J. P. 405.

⁵ *Peacock v. R.*, 4 C. B. (N.S.) 264; 27 L. J. C. P. 224; 22 J. P. 403; 31 L. T. 101; *ex parte Simpkin*, 29 L. J. M. C. 23; *Wynne v. Ronaldson*, 29 J. P. 566; 13 W. R. 899; 12 L. T. 711.

⁶ *Crowther v. Boulton*, 13 Q. B. D. 680; 49 J. P. 135; 33 W. R. 150; *Great Northern Railway Company v. Inett*, 2 Q. B. D. 284; 41 J. P. 294; 35 W. R. 584.

⁷ *Wakefield v. West Riding Justices*, 35 L. J. M. C. 69.

⁸ *Ex parte Macleod*, 25 J. P. 84, *Muir v. Hore*, 47 L. J. M. C. 17; 41 J. P. 471; 37 L. T. 315.

⁹ 20 & 21 Vict. c. 43, § 4.

¹⁰ *R. v. Macclesfield*, 2 L. T. 352; *Christie v. St. Luke*, 8 E. & B. 992; 27 L. J. M. C. 153; 4 Jur. 733.

PART V.

EXCISE LICENSES AND GENERAL LAW.

SECTION XXII.

EXCISE RETAIL LICENSES.

General Provisions.—Any person intending to retail intoxicating liquor, who has obtained a justices' license or certificate, must also take out an excise license. In certain cases an excise license is alone sufficient authority for retailing such liquors.¹ But in all cases where a justices' license or certificate is required an excise license is also necessary.²

The granting of an excise license is not a judicial act,² and the excise authorities, where the applicant has complied with the statutory requirements, have no discretion to refuse a license. Any person duly qualified may take out such license on the payment of the statutory duty.³

The principal general Acts now governing excise licenses are the Excise Licenses Act, 1825,³ and the Inland Revenue Act, 1880, the latter of which has imposed a new scale of duties.⁴

As in the case of justices' licenses and certificates, excise liquor licenses are only granted in respect of particular specified premises, and afford no protection to any one selling beyond the limits of such premises.⁵

¹ As to special occasions, theatres, packet boats, and spruce or black beer, see *ante*, Section XII., pp. 73, 74.

² *R. v. Salford Overseers*, 18 Q. B. 687; 21 L. J. M. C. 223; 19 L. T. (O.S.) 165.

³ 6 Geo. IV. c. 81, § 6, see *post*, p. 248.

⁴ 43 & 44 Vict. c. 20.

⁵ 6 Geo. IV. c. 81, § 10; 53 Vict. c. 8, § 9.

Any person retailing any intoxicating liquor without an excise license authorising him so to do is liable to forfeit the statutory excise penalty imposed in such case. The amount of these penalties varies in respect of different liquors, and sometimes in respect of the same liquor, under different statutes.¹

These excise penalties are distinct from the penalties imposed by the Licensing Acts, 1872 and 1874, and although those Acts provide that an offender shall not be punished twice for the same offence,² this does not, it would seem, prevent the enforcing of an excise penalty in addition to proceedings under those Acts.³

Excise penalties, as a general rule, can only be enforced by the Commissioners of Inland Revenue, as the persons alone empowered to sue for them.⁴

By § 24 of the Revenue Act, 1889, any person acting in contravention of his excise license is liable, if no specific penalty is imposed by any Act for the offence so committed by him, to forfeit the penalty imposed by law upon a person dealing in or retailing or selling the article in question without having an excise license in force authorising him so to do.⁵

¹ In the case of spirits, under the Excise Act, 1825 (6 Geo. IV. c. 81, § 26), the penalty is £50 for an unlicensed retailer; by the Beerhouse Act, 1830 (1 Wm. IV. c. 64, § 7), a person licensed under that Act to retail beer who retails spirits incurs a penalty of £20; under the Spirits Act, 1880 (43 & 44 Vict. c. 24, § 146), a penalty of £100 is imposed on any one selling spirits otherwise than in premises for which he is licensed. In the case of wine, the unlicensed retailer is liable to a penalty of £50, under the Excise Act, 1825 (§ 26), and to one of £20 under the Beerhouse Act, 1830 (§ 7), and the Refreshment Houses Act, 1860 (§ 19). Retailing sweets without a license entails a penalty of £50 under the Excise Acts, 1825 (§ 26), and 1860 (23 & 24 Vict. c. 113, § 7). In the case of beer, the penalty for unlicensed retailing for indoor consumption is £50 under the Excise Act, 1825 (§ 26), and £20 under the Beerhouse Acts, 1830 (§ 7), and 1834 (4 & 5 Wm. IV. c. 85, § 17); and for off retailing the last Act imposes a penalty of £10. In the case of cider and perry, the penalties are the same as for beer (1 Wm. IV. c. 64, § 30).

² L. A. 1872, § 59.

³ See *Saunders v. Baldy*, L. R. 1 Q. B. 87; 6 B. & S. 791; 30 J. P. 148; 13 L. T. 322; 14 W. R. 177.

⁴ 53 & 54 Vict. c. 21, § 21. As to excise prosecutions, see this Act (Inland Revenue Act, 1890) and *Dyer v. Tulley*, [1894] 2 Q. B. 794; 58 J. P. 656; *Hargreaves v. Hilliam*, 58 J. P. 655.

⁵ 52 & 53 Vict. c. 42, § 24.

Where a justices' license or certificate is forfeited in pursuance of the Licensing Acts, 1872 and 1874, or becomes void under any provision of those Acts, any license for the sale of intoxicating liquors granted by the Commissioners of Inland Revenue to the holder of such license or certificate becomes void also.¹

By § 23 of the Licensing Act, 1874, it is provided that separate licenses of justices shall not be required in the case of separate excise licenses, and that a license of justices shall comprehend a permission to the licensee to take out as many excise licenses as may be specified in such license of the justices.

Publican's Spirit License.—This excise license, described in the Revenue Act, 1880, as the license to be taken out by a retailer of spirits, authorises the holder to sell by retail for consumption, whether on or off the licensed premises, all intoxicating liquors for the sale of which the sanction of the excise authorities is required.²

The duty payable in respect of it varies (according to the annual value of the licensed premises) from £4 10s. to £60.³ In estimating such annual value, the offices, courts, yards, and gardens occupied with the premises must be included.³

Where a restaurateur or eating-house keeper, who does not keep an open drinking-bar, takes out this license as a six days' and early closing license as an auxiliary only to his business, the duty shall not exceed £30. A reduction on this ground may not, however, be made unless the licensing justices have certified, by indorsement on their certificate, that the nature of the business carried on by the applicant justifies such reduction.⁴

If the license is taken out within the limits of the

¹ L. A. 1872, § 63.

² 43 & 44 Vict. c. 20, § 43 (2). "Beer" includes cider, "wine," includes sweets: see 48 & 49 Vict. c. 51, § 4.

³ For the scale of duties, see 43 & 44 Vict. c. 20, § 43, *post*. As to valuation of premises, see 6 Geo. IV. c. 81, § 5; also Metropolis Act, 1869 (32 & 33 Vict. c. 67). As to reduction of duty allowed in the case of certain hotels above the annual value of £50, see 43 & 44 Vict. c. 20, § 43 (4), *post*.

⁴ 43 & 44 Vict. c. 20, § 43 (3).

head or chief office of excise in London, it is granted by two or more Commissioners of Excise, or such person or persons as such commissioners may from time to time employ for the purpose: if in any other part of England, by the collector (or other person having charge of the collection) and the supervisor of excise within the collection and district in which the license is taken out.¹

The license must set forth the trade, or business, true name and place of abode of the grantee, the date at which it is granted, and the place at which the trade or business is to be carried on.²

This excise license can only be granted to the holder of a justices' alehouse license.³

Where the licensed premises have been destroyed or rendered uninhabitable by fire or other unavoidable cause or accident, the authorities empowered to grant these licenses may transfer them so as to admit of the business being carried on at some other house in the same district, of which due entry is made with the excise authorities. But this transfer may only be lawfully made by the excise authorities to a person producing to them a justices' license under 9 Geo. IV., c. 61.⁴ So, also, where the license holder dies or removes from the premises, this license may be transferred by the excise authorities (by endorsement) to the executors, administrators, widow or child of the person so dying, or to the assignee or assignees of the person so removing, who shall be possessed of and occupy the licensed premises, so that the business may be carried on during the residue of the current license without payment of any fresh duty. But for this transfer the certificate of a justice of the peace,⁵ given after such death or removal, approving the transferee is necessary in the case of a house licensed for the sale of beer, cider, perry, or sweets to be consumed upon the premises.⁶

¹ 6 Geo. IV. c. 81, § 6.

² Ibid., § 7.

³ Ibid., §§ 13, 14; 9 Geo. IV. c. 61, § 17.

⁴ Ibid., § 11.

⁵ This enactment was prior to the Alehouse Act, 1828. Probably now the usual justices' certificate is necessary.

⁶ Ibid., § 21.

A publican's excise license expires on the 10th of October in each year.¹

Every holder of this license, desiring to renew it, is required to give notice of his intention in writing, twenty-one days before the license expires, to the excise licensing authority of his district. Where this is done, the renewal is dated from the expiration of the current license, otherwise the license bears the date of the day of application.¹

The holder of an excise license must have his full name placed and fixed, in letters publicly visible and legible, and at least one inch long, in and upon his premises, with the word "licensed" thereafter, and words describing the trade for which the license has been granted.² Such letters must be fixed outside the licensed premises, over the front, and not more than three feet from the top of the principal door or entrance. Any license holder failing to comply with this requirement, and any person not so licensed putting up such letters, is liable to a penalty of £20.³

So, too, any licensed person, not producing within a reasonable time his license on demand by an officer of excise, is liable to a like penalty of £20.³

The licensed premises must be entered with the excise authority of the district. No entry is legal which is not made in the name of the true and real owner of the trade or business, who must be over the age of twenty-one years.⁴ Only one entry can be made at one time in respect of the same premises.⁵ The penalty for using premises not entered as above is £200.⁶ For using them otherwise than as entered, £100.⁷

In the case of an applicant who has not held (within a period of two years) an excise license for the same business (whether in the same or other premises), an abatement of duty to the extent of one-fourth is allowed

¹ 6 Geo. IV. c. 81, § 16.

² Ibid., § 25.

³ Ibid., § 28.

⁴ 7 & 8 Geo. IV. c. 53, § 20.

⁵ 4 & 5 Wm. IV. c. 51, § 8.

⁶ Ibid., § 6.

⁷ Ibid., § 7. Where the business is owned by a company the directors or managers may make entry (4 & 5 Vict. c. 20, § 6). A married woman may make entry where her husband becomes insane or leaves the country: *ibid.*, § 7.

This relates to "house" only. As to Company

if his license is taken out in the second quarter of the current licensing year, of one-half if taken out in the third quarter, and of three-fourths if taken out in the last quarter of such year.¹

Where the justices' license expires before the excise license (the license holder not having been meanwhile disqualified by any conviction), a return of duty may similarly be obtained.² This provision would seem, however, only to apply now in the case of licenses in Middlesex and Surrey, as elsewhere the justices' alehouse licenses expire, like the excise spirit retailers' licenses, on the 10th of October.

Formerly the expiration of a justices' license likewise terminated the excise license for the same premises, and now, under § 63 of the Licensing Act, 1872, when a justices' license or certificate is forfeited in pursuance of that Act, or becomes void under any of the provisions of that Act, any license for the sale of intoxicating liquors granted by the Commissioners of Inland Revenue to the holder of such license is also void.³

Spirit Dealer's Foreign Liqueurs Additional Retail "Off" License.—This license, authorised by the Liqueur Act, 1848,⁴ may be taken out by any person duly licensed as a wholesale dealer in spirits under the Excise Licenses Act, 1825. It authorises the sale by retail of foreign liqueurs, not to be consumed on the premises, in any quantity not less than one reputed quart bottle or in the bottles in which such liqueurs have been imported.⁵

This license expires on the 5th of July in each year.⁶ The duty payable in respect of it is £2 2s.⁶

The general provisions of the Excise Licenses Act, 1825, apply to this license.⁵

Spirit Dealers' Additional Retail License.—This license may be taken out by any duly licensed dealer in spirits in England. It authorises such person to sell foreign or

¹ 6 Geo. IV. c. 81, §§ 17, 18.

² *Ibid.*, § 24.

³ *Ibid.*, L. A. 1872, § 63.

⁴ The Liqueur Act, 1848; 11 & 12 Vict. c. 121, § 9.

⁵ *Ibid.*, § 11.

⁶ *Ibid.*, § 10.

British spirits for consumption off the premises, in any quantity not less than one reputed quart bottle, or, in the case of foreign liqueurs, in the bottles in which the same may have been imported.¹

This license expires on the 5th of July.² The duty is £3 3s.³

By § 68 of the Licensing Act, 1872, "No person shall sell by retail liqueurs or spirits under the authority of any retail license which such person shall have obtained as a wholesale spirit dealer from the Commissioners of Inland Revenue, except in premises occupied and used exclusively for the sale therein of intoxicating liquor, and which premises have no communication with the premises of nor are in any way occupied by a person who is carrying on any other trade or business, unless such person shall have first obtained from the licensing justices a license authorising such sale in premises not exclusively so occupied and used."

Excise Licenses under the Beerhouse Acts.—These licenses are of four kinds, viz. : (1) A license for the sale of beer, ale, and porter (which entitles the holder to sell also cider and perry), authorising consumption either on or off the premises. (2) A license to sell the like liquors for consumption off the premises only ; (3) A license for the sale of cider and perry only, to be consumed either on or off the premises ; and (4) a license for the sale of the like liquors to be consumed only off the premises.⁴

The duty now payable in respect of these licenses is as follows :—

		£	s.
Beer (including ale, porter, cider, and perry)	" on "	3	10
Beer	" off "	1	5
Cider (including perry)	" on "	1	5
Cider	" off "	1	5

Each of these licenses is a license to sell by retail, *i.e.* in

¹ Revenue Act, (No. 1) 1861 ; 24 & 25 Vict. c. 21, § 2.

² *Ibid.*, § 4 ; 6 Geo. IV., c. 81, § 16.

³ *Ibid.*, schedule A.

⁴ 1 Wm. IV. c. 64, §§ 2, 30. Beer includes any liquor sold as a description of beer which contains more than 2 per cent. of proof spirit. 48 & 49 Vict. c. 51, § 4. As to Botanic beer, see *Howorth v. Minns*, 51 J. P. 7.

quantities not less, at one time, than four and a half gallons.¹ In the case of licenses for the sale of cider or perry, the license must state whether the liquor is to be consumed on or off the premises.² The sales authorised are sales only at the premises named in the license.³

The applicant for any one of these licenses must be a householder, who has obtained a certificate from the justices at the general annual licensing meeting authorising him to apply for such license.⁴ He must also be the real resident holder and occupier of the premises, and must reside thereon.⁵

In the case of premises licensed for indoor consumption before 1872, and in the case of all premises licensed for outdoor consumption, a rateable annual value of £8, £11, or £15 respectively is necessary, according to the population of the neighbourhood. In the case of premises licensed for indoor consumption since 1872, the qualification required is that enacted in § 45 of the Licensing Act, 1872.⁶

An applicant must specify his name in full and also the premises in respect of which he desires to be licensed. No such license may be granted to a sheriff's officer or an officer executing the process of any Court of justice.⁷

These licenses, formerly granted for twelve calendar months, now remain in force from the day of issue to the 10th of October next ensuing.⁸

Every holder of such license must make entry of his premises with the excise authorities.⁹

A list of these licenses is kept by the excise authorities in each district. A magistrate for the district may at any time inspect the list so kept, and a copy of such list is directed to be transmitted to the clerk to the magistrates once a month.⁷

On the death of a license holder during the currency of the license the excise authorities may, by endorsement

¹ 4 & 5 Wm. IV. c. 85, § 19.

² *Ibid.*, § 15.

³ *Ibid.*, § 10.

⁴ 32 & 33 Vict. c. 27, §§ 4-6. See *ante*, p. 46.

⁵ 3 & 4 Vict. c. 61, § 1. *R. v. Allmey*, 35 J. P. 534.

⁶ See *ante*, pp. 47, 48.

⁷ 1 Wm. IV. c. 64, § 2.

⁸ 24 & 25 Vict. c. 91, § 14.

⁹ 3 & 4 Vict. c. 61, § 9.

on the license, authorise the executors, administrators, widow, or child of such person, who shall be possessed of and occupy the licensed dwelling-house, to carry on the business.¹ Houses licensed for the retail sale of beer or cider may be entered by an officer of excise at any time during which such house may be kept open for sale.²

Persons licensed under the Beerhouse Acts who (without any further license in that behalf) sell wine or spirits or allow wine or spirits to be consumed upon their premises are liable to a penalty of £20.³ Unlicensed persons selling beer, etc., or cider are liable, where the sale is for consumption on the premises to a penalty of £20, where for consumption off, to a penalty of £10.⁴

Licenses under the Beerhouse Acts are granted by the same authorities as spirit retailers' or publicans' excise licenses, and the provisions as to a proportional deduction of duty equally apply to these licenses.⁵

Additional Retail Beer License.—Any person licensed to sell strong beer in casks containing not less than four and a half gallons, or in not less than two dozen reputed quart bottles at one time, to be consumed off the premises, may take out an additional license to retail beer (also for consumption off the premises) in any less quantity and in any other manner.⁶

This additional license can now only be granted upon the production of a certificate of the justices,⁷ and the premises (unless similarly licensed on and since the 14th of July, 1870) must have the same rating qualification as is required in the case of a license to sell beer for consumption on the premises.⁸

The duty upon this license is £1 5s.⁹ The license expires on the 5th of July.¹⁰

¹ 3 & 4 Vict. c. 61, § 8.

² *Ibid.*, § 11.

³ 1 Wm. IV. c. 64, § 7; 4 & 5 Wm. IV. c. 85, § 16.

⁴ *Ibid.*, § 17.

⁵ 1 Wm. IV. c. 64, § 2; 6 Geo. IV. c. 81, § 17.

⁶ Revenue Act, 1863 (26 & 27 Vict. c. 33, § 1).

⁷ 32 & 33 Vict. c. 27, § 4; 43 Vict. c. 6, § 1.

⁸ 33 & 34 Vict. c. 29, § 10.

⁹ 43 & 44 Vict. c. 20, § 41.

¹⁰ 26 & 27 Vict. c. 33, § 26; 6 Geo. IV. c. 81, § 16. *R. v. De Rutzen*, 1 Q. B. D. 55; 45 L. J. M. C. 57; 40 J. P. 150; 33 L. T. 726; 24 W. R. 343.

Residence on the premises is not required.

Table Beer License.—This license may be taken out by any person for the sale of table beer, in a house or shop, at a price not exceeding one penny halfpenny per quart. The license is to sell for consumption off the premises only.¹

The duty is 5s.²

This license can now only be granted upon the production of a justices' certificate,³ and the justices have an absolute discretion to grant or refuse their certificate.⁴

This license also expires on the 5th of July.⁵

No rating qualification is required, nor residence on the premises.

Refreshment House License.—This license does not authorise the sale of intoxicating liquor. Refreshment houses include "all houses, rooms, shops, or buildings kept open for public refreshment, resort, and entertainment,⁶ at any time between the hours of ten o'clock at night and five in the following morning, not being licensed for the sale of beer, cider, wine or spirits respectively."⁷ This license must be taken out by the resident, owner, tenant, or occupier.⁷

The duty is 10s. 6d. if the house is under the rent or value of £30 a year. If above that value, £1 1s.⁸

Refreshment house licenses are granted by the excise collector and the supervisor of excise of the district, or by such other person or persons as the Commissioners of Inland Revenue shall appoint for the purpose.⁹ These licenses expire on the 31st of March in each year, and may be renewed annually. They bear date from the day they are granted, unless granted between the 31st of March and the 1st of May, in which case they are dated the 1st of April.¹⁰

¹ Revenue Act (No. 1), 1861; 24 & 25 Vict. c. 21, § 3.

² Ibid., schedule A. ³ 32 & 33 Vict. c. 27, § 4.

⁴ 43 Vict. c. 6, § 1; 45 & 46 Vict. c. 34, § 1.

⁵ 24 & 25 Vict. c. 21, § 4; 6 Geo. IV. c. 81, § 16.

⁶ "Entertainment" means entertainment in the nature of refreshment: see *Taylor v. Oram*, 1 H. & C. 370; 31 L. J. M. C. 252; 10 W. R. 800; 27 J. P. 8; 7 L. T. (N.S.) 68.

⁷ 23 & 24 Vict. c. 27, § 6.

⁸ 24 & 25 Vict. c. 91, § 9.

⁹ 23 & 24 Vict. c. 27, § 10.

¹⁰ Ibid., § 11.

On the death of the license holder during the currency of the license, the executor, administrator, widow, or child of such person may be authorised by the endorsement of the excise licensing authority to carry on the business for the remainder of the current license if in possession of and occupying the licensed premises.¹

So likewise in the case of the removal of the license holder from the licensed premises, his assignee or assigns, if in possession of and occupying the premises, may by endorsement be authorised to carry on the business during the remainder of the license term.²

A list or register of these licenses is kept for each district, and a copy transmitted every six months to the clerk to the magistrates.³

All constables and officers of police may, when they think proper, enter houses licensed as refreshment houses and the premises belonging thereto. A refusal to admit such constable or officer demanding admittance exposes the license holder to a penalty of £5 for a first offence, and on a second offence, if the Court so order, to a forfeiture of his license and disqualification for two years.⁴

Every person licensed to keep a refreshment house (not licensed for the sale of intoxicating liquor) who shall sell, or permit, or suffer to be sold therein any intoxicating liquor, or who shall knowingly suffer any unlawful games or gaming therein, or knowingly suffer prostitutes, thieves, or drunken and disorderly persons to assemble at or continue in or upon his premises, or do, or suffer, or permit any act in contravention of his license is liable, upon conviction before two justices, to a fine for a first offence of forty shillings; for a second offence, of £5; and for a third offence, of £20, or a forfeiture of his license: such forfeiture disqualifies the license holder for a period of one year.⁵ From a second and third conviction an appeal lies to Quarter Sessions.⁶

¹ 23 & 24 Vict. c. 27, § 12.

² 25 & 26 Vict. c. 22, § 15; 6 Geo. IV. c. 81, § 21.

³ 23 & 24 Vict. c. 27, § 16.

⁴ *Ibid.*, § 18.

⁵ *Ibid.*, § 32.

⁶ *Ibid.*, § 34. See, also, §§ 35, 36.

Any person drunken, riotous, quarrelsome, or disorderly upon premises licensed as a refreshment house (but not licensed for the sale of intoxicating liquors) who shall refuse or neglect to quit such premises on being requested to do so by the manager, or occupier, or his agent or servant, or by any constable, is liable, on conviction before one justice, to a fine of forty shillings.¹

The penalty for keeping a refreshment house without a license in that behalf is £20.²

The hours during which refreshment houses, not licensed for the sale of intoxicating liquor, are required to be closed are regulated by the Public-House Closing Act, 1864,³ as amended by § 11 of the Licensing Act, 1874. Under that Act such refreshment houses are now required to be closed from the hour of the night or morning at which houses licensed for the sale of intoxicating liquors by retail, situate in the same place, are required to be closed, till four o'clock in the morning. Any person contravening this provision is liable to a penalty of £5.⁴

The keeper of a licensed refreshment house may, however, obtain an occasional license exempting him from these closing hours on any special occasion from the local authority, where such authority in its discretion thinks fit to grant such license.⁵

By § 27 of the Licensing Act, 1872, no intoxicating liquor may be consumed upon premises licensed as a refreshment house, but not for the sale of such liquor, during the hours during which such premises would require to be closed if they were the licensed premises of licensed victuallers. The licensed keeper of such house who allows a contravention of this provision is liable to a penalty of £10 for a first, and £20 for any subsequent, offence.

A refreshment house license does not exempt the holder from the provisions of the Lord's Day Act (29 Car. II. c. 7)

¹ 23 & 24 Vict. c. 27, § 41.

² *Ibid.*, § 9.

³ 27 & 28 Vict. c. 64.

⁴ *Ibid.*, § 5.

⁵ *Ibid.*, § 7. As to who is the Local Authority, see § 8, as amended by 28 & 29 Vict. c. 77, § 5.

in respect of the sale of articles by him on Sunday for consumption elsewhere than on his premises, such selling being no part of the calling of a refreshment house keeper.¹

Wine Licenses under the Refreshment Houses Act, 1860.—These licenses are of two kinds: one authorising the sale of wine for consumption on the premises, the other for consumption off.

1. *Confectioners' Retail "On" License.*—This license authorises the sale of foreign wine by retail for consumption on the premises. It may be taken out by any licensed keeper of a refreshment house who pursues therein the business of a confectioner, or who keeps his house open as an eating house for the consumption therein of animal food or other victuals.² The intention being that the wine sold should be ancillary to the consumption of food. The licensed premises must have a rent and value of £10 a year, or, if the population of the place exceeds ten thousand, a value of £20.³

The duty is £3 10s.⁴ The license expires on the 31st of March.⁵

2. *Shopkeepers' and Dealers' Retail "Off" License.*—This license may be taken out by any person who keeps a shop for the sale of any goods or commodities other than foreign wine, or by any person licensed as a dealer in wine.⁶

It authorises the sale of foreign wine in reputed quart or pint bottles only, for consumption off the premises.⁶

No annual rateable value is required.⁸

The duty is £2 10s.⁷ This license also expires on the 31st of March.⁵

The above wine licenses, like refreshment house licenses, are granted by the collector or other person having charge of the excise collection and the supervisor of excise, or by such other persons as the Commissioners of Inland Revenue may appoint.⁸ If granted between the 31st of March and the 1st of May, they bear date the 1st of April; if at any

¹ *Duffell v. Curtis*, 35 L. T. (N.S.) 853. ² 23 & 24 Vict. c. 27, § 7.

³ *Ibid.*, § 8.

⁴ 43 & 44 Vict. c. 20, § 41.

⁵ 23 & 24 Vict. c. 27, § 11.

⁶ *Ibid.*, § 3.

⁷ 43 & 44 Vict. c. 20, § 41.

⁸ 23 & 24 Vict. c. 27, § 10.

other time, they are dated from the day on which they are granted.

A register of these licenses is kept for each district, and a copy of the list is required to be sent every six months to the clerk to the magistrates.¹

Retail selling of foreign wine within the meaning of these licenses means a sale at any one time of any less quantity than two gallons or one dozen reputed quart bottles.²

On the death or removal of the license holder during the currency of the license, these licenses may be transferred by endorsement, as in the case of a license to keep a refreshment house. But in a case of removal the excise authorities may not license the assignee by endorsement to sell wine by retail to be consumed on the premises unless such assignee is duly licensed to keep a refreshment house, and has obtained a certificate from a justice of the city, borough, or place in which the premises are situate, that such justice does not object to the transfer. The assignee must within five weeks qualify himself to be the holder of such a license under the Acts, otherwise at the end of that period the authority ceases.³

Licensed retailers of wine are required to make entry of their premises with the excise authorities, and wine upon premises not so entered is liable to be forfeited.⁴

Officers of excise may enter premises licensed for the sale of wine during the hours during which such premises may be open for sale.⁵

A licensed retailer of wine having spirits upon his premises is liable to a penalty of £50;⁶ and an unlicensed person selling wine, whether for consumption on or off his premises, incurs a penalty of £20.⁷

Any person convicted of felony, or of selling spirits without a license, is for ever disqualified from selling wine by retail, and any license for that purpose granted to such person is void.⁸

¹ 23 & 24 Vict. c. 27, § 16.

² Ibid., § 4.

³ 25 & 26 Vict. c. 22, § 15.

⁴ 23 & 24 Vict. c. 27, § 23.

⁵ Ibid., § 24.

⁶ Ibid., § 25.

⁷ Ibid., § 19.

⁸ Ibid., § 22.

Under this Act the expressions "foreign wine" and "spirits" are respectively defined as follows:—

"All liquor which shall be sold or offered for sale by any person, whether licensed under this Act or not, as being foreign wine, or under the name by which any foreign wine is usually designated or known, shall, as against the person who shall so sell or offer the same for sale, be deemed and taken to be foreign wine; and any fermented liquor containing a greater proportion than forty per centum of proof spirit shall be deemed and taken to be spirits."¹ These wine licenses include and authorise the sale of sweets, made wines, mead, and metheglin.²

Beer and Wine Licenses.—These licenses may be taken out either for consumption on or off the premises. They can only be granted upon the production of a justices' license or certificate.

For sale for consumption on the premises, the duty is £4; for sale for consumption off, £3.³

In these licenses "wine" includes sweets, and "beer" includes cider.⁴

These licenses expire on the 10th of October.⁵

Sweets License.—A license to retail sweets (including made wines, mead, and metheglin) may now be obtained from the excise authorities on the payment of a duty of £1 5s.⁶ The duty is the same whether for consumption on or off the premises. A justices' certificate is necessary, and if the license is for consumption on the premises the justices' discretion to grant or refuse the certificate is absolute, as in the case of wine.⁷

Under the Excise Licenses Act, 1825, a license to retail sweets for consumption on the premises could only be

¹ 23 & 24 Vict. c. 27, § 21. A liquor described as "best pale sherry, British," was held to be foreign wine within the terms of this section. See *Richards v. Banks*, 52 J. P. 23; 58 L. T. 634.

² 26 & 27 Vict. c. 33, § 18; 38 & 39 Vict. c. 23, § 9; 43 & 44 Vict. c. 20, § 40.

³ Revenue Act (No. 2), 1861 (24 & 25 Vict. c. 91, § 10); 43 & 44 Vict. c. 20, § 42 (1). Formerly a licensed beer dealer was prohibited from selling wine or suffering it to be consumed on his premises: 4 & 5 Wm. IV. c. 85, § 16.

⁴ 43 & 44 Vict. c. 20, § 40.

⁵ *Ibid.*, § 42 (2).

⁶ *Ibid.*, § 41.

⁷ L. A. 1872.

granted to a person also licensed to retail beer for indoor consumption.¹ The penalty for retailing sweets without a license under that Act is £50.²

This license expires on the 5th of July.

A sale of sweets by retail is a sale at any one time of a quantity less than two gallons or one dozen reputed quart bottles.³ In the construction of any enactment relating to the revenue of excise, the expression "sweets or made wines" shall mean any liquor which is made from fruit and sugar, or from fruit or sugar mixed with any other material, and which has undergone a process of fermentation in the manufacture thereof.⁴

Licensed Victualler's Occasional License.—The Commissioners of Inland Revenue may, whenever they shall consider it conducive to public convenience, comfort, and order, authorise any officer of excise to grant to a duly licensed alehouse-keeper an occasional license, empowering him to sell, at the place and during the period, not exceeding six consecutive days, specified in such occasional license, such liquors as he is licensed to sell on his usual premises.⁵

This license may not be granted without the consent in writing of a justice of the peace usually acting for the petty sessional division; nor for Sunday, Christmas Day, nor Good Friday, nor any day appointed for a public fast or thanksgiving.⁶ The hours during which such license may authorise the sale of any beer, spirits, or wine shall extend from such hour, not earlier than sunrise, until such hour, not later than ten o'clock at night, as may be specified in the consent given by the justice.⁶

Upon the occasion of any public dinner or ball, it shall be lawful for the person who shall have obtained this occasional license to sell the above-mentioned liquors

¹ 6 Geo. IV. c. 81, § 14.

² Ibid., § 26.

³ For a sale in that or any greater quantity a dealer's (or wholesale) license is required under the Excise Act, 1860 (23 & 24 Vict. c. 113, § 7): see *post*.

⁴ 52 & 53 Vict. c. 42, § 28.

⁵ 25 & 26 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, § 19.

⁶ 26 & 27 Vict. c. 33, § 20; L. A. 1874, § 19.

during such hours before or after sunrise or sunset as shall be allowed and specified in that behalf in the justice's consent.¹

The duty payable on this occasional license is 2s. 6d. per day ; for a second period of six days, if only separated from the first by the intervention of Sundays and holidays, the duty shall not exceed 10s.²

Refreshment House Keeper's Occasional License.—This excise license may be granted by any officer of excise authorised in that behalf by the Commissioners of Inland Revenue, when they shall consider it necessary for the accommodation of the public, to any person licensed to keep a refreshment house, or to sell by retail in a refreshment house foreign wine to be consumed therein, or to retail beer to be consumed on the premises under the Beerhouse Act, 1834.³

This license is granted to enable the holder to carry on his usual trade at some place other than his licensed premises, during the period, not exceeding three consecutive days, and at the place named in such license.

The duty payable in respect of such occasional license is, in the case of an occasional wine or beer license, 1s. per day. For an occasional refreshment-house license no duty is payable.⁴

The consent in writing of a justice of the peace is required.⁵ The hours during which such occasional license may authorise sales are the same as in the case of a publican's occasional license, and the provision as to the occasion of a public dinner or ball applies equally to this license.⁶

Formerly the common and unlicensed selling of ale in booths or other places at lawful fairs was allowed "for the relief of the king's subjects;"⁷ and the Licensing Act of

¹ 26 & 27 Vict. c. 33, § 20.

² *Ibid.*, § 19.

³ 27 & 28 Vict. c. 18, § 5.

⁴ *Ibid.*, schedule B.

⁵ 27 & 28 Vict. c. 18, § 5; and 26 & 27 Vict. c. 33, § 20. See *Hannant v. Foulger*, L. R. 2 Q. B. 399; 36 L. J. M. C. 119; 31 J. P. 628; 8 B. & S. 425; 15 W. R. 787.

⁶ 27 & 28 Vict. c. 18, § 5.

⁷ 5 & 6 Edw. VI. c. 26, § 6; 9 Geo. IV. c. 61, § 36; 1 Wm. IV. c. 64, § 29.

1872 made no change in this respect.¹ Now, however, by § 18 of the Licensing Act, 1874, any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races, must first obtain an occasional license.²

Theatre Liquor License.—The retail sale of beer, wine, and spirits is authorised in theatres, under an excise license by the Excise Act, 1835,³ which provides that it shall be lawful for the commissioners and officers of excise to grant retail licenses to any person to sell beer, spirits, and wine in any theatre established under a royal patent, or in any theatre or other place of public entertainment licensed by the Lord Chamberlain or by the justices of the peace,⁴ without the production by such person of any certificate or authority from the licensing justices.

The Licensing Act, 1872, has saved and preserved this right in the case of proprietors of theatres, but not in the case of other places of public entertainment; so that in such latter places a justices' license is now necessary.⁵

By the Inland Revenue Act, 1880, it is provided that the duty payable in respect of a license to retail spirits in any theatre under 5 & 6 Wm. IV., c. 39, § 7, shall not exceed £20.⁶

Theatre licensing authorities are empowered to impose conditions for regulating the management of the houses licensed by them.⁷ Such conditions usually restrict (*i.e.*) the hours during which intoxicating liquors may be sold in the theatre. In the case of licenses granted by the Lord Chamberlain, refreshments are only allowed to be sold during the hours of performance, and only to the audience and company engaged in the house.⁸

¹ *Haywood v. Holland*, 37 J. P. 376; 28 L. T. 702; 21 W. R. 920.

² See *ante*, pp. 95, 96.

³ 5 & 6 Wm. IV. c. 39, § 7.

⁴ Now the County Council. 51 & 52 Vict. c. 41, §§ 7, 8.

⁵ L. A. 1872, § 72; see also *R. v. Commissioners of Inland Revenue*, 21 Q. B. D. 569; 57 L. J. M. C. 92; 52 J. P. 390; 59 L. T. 378; 36 W. R. 696.

⁶ 43 & 44 Vict. c. 20, § 43 (5).

⁷ 6 & 7 Vict. c. 68, § 9.

⁸ See Appendix, Part VIII., *post*. The licensing authority may even impose a condition that no liquor shall be sold in the house at any time.

The jurisdiction of the licensing authorities to impose such a condition would seem to afford adequate protection against any abuse of the privilege of selling liquor in theatres under an excise license, and hitherto it has been generally supposed that the closing hours provisions of the Licensing Acts, 1872 and 1874, had no application to such sales. The High Court, however, has recently decided that the words of exemption in § 72 of the Licensing Act, 1872, do not exclude the application of the closing hours to theatres, but only safeguard the right of theatre proprietors to retail liquors without a justices' license or certificate.¹ If this construction be correct, it is surprising that theatres are not mentioned in § 73 of the Act of 1872 instead of being excepted under the much wider words of exemption used in § 72—"nothing in this Act shall affect or apply to the sale of intoxicating liquor by proprietors of theatres in pursuance of the Acts in that behalf." Seeing that ample provision already existed for controlling the hours of sale in theatres, through the theatre licensing authority, where such authority chose to impose conditions, it would seem that the above construction of § 72 of the Licensing Act, 1872, was not required in the public interest. The reasoning upon which the judgments in this case are based would appear to bring sales in canteens and sales on packet boats equally under the closing hours provisions; but the Court, apparently feeling the difficulty of such a conclusion, expressly abstained from deciding this.

Packet Boat Licenses.—These licenses authorise the sale of foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco, upon packet boats to passengers, for consumption thereon during the voyage. The words "packet boat" include "any packet boat or other vessel employed for the carriage and conveyance of passengers from one part of the United Kingdom to another or other parts thereof."²

See *R. v. West Riding County Council*, [1896] 2 Q. B. 336; 65 L. J. M. C. 136; 60 J. P. 550.

¹ *Gallagher v. Rudd*, [1896] 1 Q. B. 114; 67 L. J. Q. B. 65; 61 J. P. 789; 46 W. R. 108.

² 9 Geo. IV. c. 47, § 1. As to meaning of "voyage," cf. *Valente v. Gibbs*, 6 C. B. N.S. 270; 28 L. J. C. P. 229; 7 W. R. 500.

Packet boat licenses are granted by the Commissioners of Excise or any officer or officers authorised by them in that behalf.¹ The grantee must be the master or commander of the boat, or some other person belonging to the boat nominated and approved of by the owner or owners, director or directors thereof residing in England; such nomination and approval being signified by the owners or directors writing and subscribing a certificate or declaration to be delivered by them to the Commissioners or Assistant Commissioners of Excise of that part of England in which such owners or directors reside, or to such person as such commissioners shall appoint for the purpose.

This excise license may be granted for a period of one day only, in which case the duty is £1; or it may be granted to continue in force until the 31st of March next ensuing, when the duty is £5.²

Packet boat licenses are transferable by endorsement, the endorsement being subscribed by the transferor. The transfer may be made either to any other master or commander or person belonging to the same vessel, or, in case of the loss or breaking up of any vessel before the license granted in respect of it has expired, then to the master or commander, or to any person of or belonging to any other vessel of the same owner or owners, or company or companies, substituted in lieu of the vessel so lost or broken up. In the latter case, the vessel which it is proposed to substitute must be nominated and approved of by the owners: their nomination and approval and the transfer being signified by their subscription to the endorsement.³

Any unlicensed person selling by retail any of the liquors authorised by this license on a packet boat is liable to a penalty of £10 for each offence.⁴

¹ 4 & 5 Wm. IV. c. 75, § 10.

² 43 & 44 Vict. c. 20, § 45.

³ Geo. IV. c. 47, § 1.

⁴ Ibid., § 3. As to sales on boats moored in the metropolitan police district on Sundays, etc., see *ante*, p. 133.

SECTION XXIII.

GENERAL LAW AFFECTING LICENSED HOUSES.

Leases and Covenants.—Leases of licensed houses usually contain special covenants, having reference to the special character of the premises, for the protection of the landlord's reversion. If no covenant is inserted binding the tenant to abstain from doing anything in his management of the house to imperil the license, the landlord will have no remedy against a tenant whose misconduct results in a forfeiture, as the Courts will not imply such an undertaking.¹

A covenant in the lease of a public-house, binding a tenant to do no act whereby the license may be forfeited, is broken if the tenant is twice convicted and both convictions are endorsed on his license, as this puts the license in jeopardy and imperils its renewal.² It may be different, however, if the license is not endorsed.

In *Wooler v. Knott*,³ the lessee covenanted not to do, omit, or permit, or suffer to be done or omitted, any act, matter, or thing whatsoever that could or might affect, lessen, or make void either or any of the licenses for the time being granted to the house. The lessee was convicted of two offences on the same day against the Licensing Acts, 1872 and 1874, but the justices directed that the licenses

¹ *Maw v. Hindmarsh*, 28 L. T. 644.

² *Harman v. Powell*, 56 J. P. 150; 65 L. T. 255. Going away and leaving a manager in possession is not imperilling the license. *Moore v. Robinson*, 48 L. J. Q. B. 156; 28 W. R. 312.

³ L. R. 1 Ex. D. 124, 265; 35 L. T. 121; 45 L. J. Ex. 884; 40 J. P. 788; 24 W. R. 1004.

should not be endorsed, and the Court held that there was no breach of the covenant. In this case, however, the Court construed the covenant as limited to the protection of existing licenses, and having no reference to renewals.

In a later case¹ the lessee of a public-house covenanted that he would "conduct and manage the business of an inn, tavern, or beerhouse keeper in such proper and orderly manner as to afford no ground or pretext whatever whereby the license or licenses should or might be suspended, discontinued, or forfeited." A person put into occupation of the demised premises by the lessee was convicted of selling drink in prohibited hours, but the license was not endorsed. In the absence of such endorsement Charles, J., held that there had been no breach of the covenant, for although the circumstance of the conviction would be reported to the justices at the next annual licensing meeting, and considered by them, they were bound to act judicially, and it was not to be assumed that the justices on this conviction alone would refuse a renewal.

Public-house leases now usually contain a proviso giving the lessor the right to re-enter upon the demised premises if the license is forfeited, or the tenant convicted of an offence against the Licensing Acts. This is a necessary precaution to enable a lessor to change his tenant in the event of such tenant's misconduct, as, whether the license is endorsed or not, convictions are always recorded against a house in the justices' register, and brought under the notice of the annual meeting on an application for renewal.

Tied Houses.—As licensed property has now been largely acquired by brewery companies, leases of public-houses frequently contain an undertaking by the tenant to purchase all the beer and spirits sold or consumed on the premises from the lessors. Such covenants are not unlawful as in restraint of trade;² but they imply that the

¹ *Fleetwood v. Hull*, 23 Q. B. D. 35; 60 L. T. 790; 58 L. J. Q. B. 341; 54 J. P. 229; 37 W. R. 714.

² *Catt v. Tourle*, L. R. 4 Ch. 654; 38 L. J. Ch. 665; 33 J. P. 659; 21 L. T. 188; 17 W. R. 662; *Clegg v. Hands*, 44 C. D. 503; 55 J. P. 180; *Hanbury v. Cundy*, 58 L. T. 155.

lessor will, on his part, supply the lessee with liquor of marketable quality as and when he may require it.¹

A general covenant by the lessee to purchase all liquor sold by him on the demised premises from his lessors, does not, it would seem, oblige the tenant to buy direct from his lessors. In *Edwick v. Hawkes*,² it was held that a purchase of the lessor's liquor through an agent without the consent of the lessors was no breach of such covenant.

A covenant to purchase the liquor sold from the lessor is a covenant running with the land. In *Clegg v. Hands*,³ the Court held a covenant not to buy or sell or dispose of any ales or stout upon the demised premises not *bonâ fide* purchased from the lessors, who were brewers, to be a covenant touching and concerning the land which ran with the premises, and was, therefore, enforceable by the assigns of the lessors, whether brewers or not.⁴ If the lease of a tied house contains a proviso giving the lessor a right to distrain upon the demised premises for the unpaid price of beer supplied to the house, such clause being entered into by way of security for the payment of money requires registration as a bill of sale, and is therefore void.⁵

Covenants not to use Premises for the Sale of Intoxicating Liquors.—Covenants to prevent demised premises being used for the sale of intoxicating liquors are frequently inserted in leases, and have, from time to time, been the subject of judicial interpretation.⁶

In *Buckle v. Fredericks*,⁷ the lessee of a theatre, with the object of providing a more convenient egress therefrom,

¹ *Luker v. Dennis*, 7 C. D. 227; 47 L. J. Ch. 174; 37 L. T. 827; 26 W. R. 167; *Edwick v. Hawkes*, 18 C. D. 199; 50 L. J. Ch. 577; 45 L. T. 168; *Stancliffe v. Clarke*, 7 Ex. 439; *Cooper v. Twibill*, 3 Camp. 286.

² *Supra*.

³ 44 C. D. 503; 55 J. P. 180; cf. *Fleetwood v. Hull*, 23 Q. B. D. 35; 58 L. J. Q. B. 341; 54 J. P. 229; 60 L. T. 790; 37 W. R. 714.

⁴ Cf. *Taite v. Gosling*, 11 C. D. 273; 48 L. J. Ch. 397; 40 L. T. 251; 27 W. R. 394; *Birmingham Breweries v. Jameson*, 78 L. T. 37.

⁵ *Pulbrook v. Ashley*, 56 L. J. Q. B. 376; 35 W. R. 779; *Stevens v. Marston*, 64 L. T. 274; 55 J. P. 404; 39 W. R. 129.

⁶ The Beerhouse Act, 1830, provided that covenants in force at the passing of that Act which prohibited the use of premises as public-houses should be construed to include the beer and cider houses then first authorised. See *post*, 11 Geo. IV. and 1 Wm. IV. c. 64, § 31.

⁷ 44 C. D. 244; 55 J. P. 214; 62 L. T. 884; 28 W. R. 742.

bought a piece of adjoining ground subject to a covenant (of which he had notice), that the trade of an innkeeper, victualler, or retailer of wine, spirits, or beer, should not be carried on there. Upon this ground he erected a building, on three floors of which he set up counters for the sale of refreshments (including wine, spirits, and beer) during the performances. The new addition could not be approached directly from the outside, but any one who had paid 6*d.* to be admitted to the performances could purchase refreshments at these counters. On these facts the Court held that a breach of the covenant had been committed.

Where words are used in a covenant which have acquired a technical meaning, the Court will construe such words strictly, and limit rather than extend their application. Thus a covenant not to erect a building to be used "as a public-house for the sale of beer, wine, malt liquors, or spirits," has been held not to prevent the sale of beer by retail under an off license; the words "public house" meaning an alehouse, and implying that the liquor sold is for consumption on the premises.¹

In like manner the words "beer house" have been strictly construed as meaning a house where beer is sold for indoor consumption, and a covenant not to use premises as a beer house as not precluding the sale thereon of beer for consumption off the premises.²

A wider construction has been placed on the words "beer shop," which, as having no technical significance, have been held to extend to any house in which beer is sold. Hence sales under an off license are a breach of a covenant not to use premises as a beer shop.³

A covenant will be construed with reference to the

¹ *Pease v. Coats*, L. R. 2 Eq. 688; 36 L. J. Ch. 57; 30 J. P. 819; 14 L. T. 886.

² *London and North Western Railway v. Garnett*, L. R. 9 Eq. 26; 39 L. J. Ch. 35; 21 L. T. 352; 18 W. R. 246; *Holt v. Collyer*, 16 C. D. 718; 45 J. P. 456; 44 L. T. 214.

³ *London and Suburban Company v. Field*, 16 C. D. 645; 38 L. J. Ch. 549; 44 L. T. 444; *Holt v. Collyer*, 16 C. D. 718; 45 J. P. 456; *Nicoll v. Fleming*, 19 C. D. 258; 51 L. J. Ch. 166; 45 L. T. 738; *St. Albans v. Battersby*, 3 Q. B. D. 359; 47 L. J. Q. B. 571; 42 J. P. 581; 38 L. T. 685; 26 W. R. 678.

meaning of its terms at the time at which it is entered into. In *Jones v. Bone* the grantee of certain lands had, in 1854, entered into a restrictive covenant not to carry on the trade or calling of an hotel or tavern keeper, or seller by retail of wine, beer, or spirits. In 1869 an occupier bound by the above covenant took out as a grocer a license under the Revenue Act, 1861, and sold wine and spirits in bottles over the counter. On these facts the Court held that inasmuch as the trade of a retailer of wine had a recognised meaning at the date of the covenant, and did not include the sales authorised by the Act of 1861, the conduct of the occupier was no breach of the covenant.¹

Where a purchaser of certain lands covenanted on conveyance for himself, his heirs, and assigns with the owners of the remaining property that he would not carry on the trade of a retailer of wine, spirits, or beer, this covenant was held to be binding upon the sub-tenant of his lessee.²

Keeping Licensed Premises open for Sale.—A license holder, as such, is under no legal obligation to keep his premises open for sale at all lawful hours, nor is he liable at law to supply any customer desiring to purchase liquor.³ If he is an innkeeper also, he is liable to indictment if, having room in his inn, he refuses to supply any traveller, requiring the same, with reasonable refreshment;⁴ but this liability is incident to his character as the keeper of an inn, and not to his position as a licensed person.

In practice, however, the freedom of a license holder, as to the opening and closing of his house, is seriously curtailed by the circumstance that licensed houses are intended to minister to the public convenience; and as customers may reasonably expect to obtain refreshment at a licensed house at any time during the usual hours of sale, any publican who

¹ 39 L. J. Ch. 405; L. R. 9 Eq. 674; 34 J. P. 468; 23 L. T. 304; 18 W. R. 489; cf. *Fielden v. Slater*, L. R. 7 Eq. 523; 38 L. J. M. C. 379; 20 L. T. 485; 17 W. R. 485.

² *Thornewell v. Johnson*, 50 L. J. Ch. 641; 44 L. T. 768; 29 W. R. 677.

³ *R. v. Armagh Justices*, [1897] 2 Ir. R. 57.

⁴ *R. v. Ivens*, 7 C. & P. 213.

capriciously closed his house, would no doubt have his license refused at the next general annual meeting, on the ground of the inconvenience to which he put the public.¹ Even where the public are not inconvenienced by the capricious closing of licensed premises, such conduct would tend to imperil the license as showing that the house in question was not required in the interests of the district. It is therefore, in fact, necessary for a license holder (despite the absence of any rule of law requiring him so to do) to keep his premises open for sale during all lawful hours.

Rights and Liabilities of Innkeepers.—Innkeepers occupy a peculiar position as compared with other licensed persons.² Their position is more onerous, inasmuch as they are at common law insurers of the goods brought by guests to their house;³ at the same time, they have a compensation in the lien which the law gives them upon all such goods for unpaid charges due from the guest. "An inn," said Best, J., in *Thompson v. Lacy*,⁴ "is a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received . . . A lodging-house keeper makes a contract with every man that comes; whereas an innkeeper is bound without making any special contract, to provide lodging and entertainment for all, at a reasonable price." An innkeeper, therefore, may not select his guests; if he has room in his house he must receive any guest who is not drunk, and behaves decorously.

At the same time, an innkeeper is not bound to comply

¹ *R. v. Armagh Justices*, [1897] 2 Ir. R. 57; also *Griffiths v. Lancashire Justices*, 51 J. P. 453; 35 W. R. 732.

² Although usually licensed, a license is not a necessary incident of an inn. A temperance hotel where no intoxicating liquors are sold may be an inn. *Cunningham v. Philp*, 12 L. T. R. 352. As to liability not being on holder of license, see *Dixon v. Birch*, L. R. 8 Ex. 135; 42 L. J. Ex. 135.

³ *Squire v. Wheeler*, 16 L. T. 93.

⁴ 3 B. & Ald. 283. A refreshment bar opening on to the street by a separate door, though attached to an hotel, is not part of an inn. Nor is a tavern necessarily an inn. *R. v. Rymer*, 2 Q. B. D. 136; 46 L. J. M. C. 108; 41 J. P. 199; 25 W. R. 415. A boarding-house keeper is not an innkeeper; *Dansey v. Richardson*, 3 E. & B. 144; 23 L. J. Q. B. 217.

with every caprice of a guest; reasonable accommodation is all that can be required of him.¹

The responsibility of an innkeeper for the safety of his guest's goods has been said to arise from the circumstance that a wayfarer has usually no means of knowing the character of those with whom he may come in contact at an inn.² An innkeeper's liability for the goods of his guest was discussed in *Burgess v. Clements*; in that case Lord Ellenborough, C.J., said, "The law obliges an innkeeper to keep the goods of guests coming to his inn, *causa hospitandi*, safely, so that, in the language of the writ, *defectu hospitatoris damnum non eveniat ullo modo*. If the goods are stolen *primâ facie*, the innkeeper is liable, but there may be circumstances, as if the guest by his own neglect induces the loss, or himself introduces the person who purloins the goods, which form an exception to the general liability as not coming within the words *pro defectu hospitatoris*."³ So, likewise, an innkeeper is not liable for the loss of a guest's goods through the act of God or the Queen's enemies;⁴ nor is there any liability if the relation of host and guest is not established between the parties.⁵

Inasmuch as an innkeeper is bound to receive a guest without inquiring into the ownership of the luggage he brings with him, the lien attaches to all goods brought to the inn by a traveller whether they in fact belong to such traveller or not; and even the circumstance that goods have been stolen will not prevent an innkeeper enforcing his lien on them for unpaid charges against the true owner.⁶

¹ *Fell v. Knight*, 8 M. & W. 269. The privilege of the guest is that of a traveller, he cannot insist on staying indefinitely at the inn, *Lamond v. Richard*, [1897] 1 Q. B. 541; 66 L. J. Q. B. 315; 61 J. P. 260; 76 L. T. 141; 45 W. R. 289.

² Per Erle, C.J., in *Holder v. Soulsby*, 29 L. J. C. P. 246; 8 C. B. (N.S.) 254; 2 L. T. 219; 8 W. R. 438.

³ 4 M. & Sel. 306.

⁴ *Morgan v. Ravey*, 6 H. & N. 265; 25 J. P. 376.

⁵ *Strauss v. County Hotel*, 12 Q. B. D. 27; 53 L. J. Q. B. 25; 48 J. P. 69; 32 W. R. 170.

⁶ *Snead v. Watkins*, 1 C. B. (N.S.) 267; 26 L. J. C. P. 57; 21 J. P. 263; *Turrell v. Crawley*, 13 Q. B. 197; 18 L. J. Q. B. 155; *Robinson v. Walter*, 3 Bulstrd., 269; *Gordon v. Silber*, 25 Q. B. D. 491; 59 L. J. Q. B. 507; 55 J. P. 134; 63 L. T. 283; 39 W. R. 111; *Threfall v. Borwick*, L. R. 10 Q. B. 210; 44 L. J. Q. B. 87; 39 J. P. 409.

An innkeeper's lien is only a right to detain goods until his debt is paid.¹ Therefore, if he sells the goods (unless he does so under statutory authority),² his lien is gone; and if he injures them while in his keeping, he is liable for such injury.³

In *Robins v. Gray*,⁴ Lord Esher, M.R., thus defined an innkeeper's liability: "The innkeeper's liability is not that of a bailee or pledgee of goods; he is bound to keep them safely. It signifies not, so far as that obligation is concerned, if they are stolen by burglars, or by the servants of the inn, or by another guest; he is liable for not keeping them safely unless they are lost by the fault of the traveller himself. That is a tremendous liability: it is a liability fixed upon the innkeeper by the fact that he has taken the goods in; and by law he has a lien upon them for the expense of keeping them as well as for the cost of the food and entertainment of the traveller. By law that lien can be enforced, not only against the person who has brought the goods into the inn, but against the real and true owner of them. That has been the law for two or three hundred years."

The lien of the innkeeper, however, only attaches to goods which have come into his possession in the character of innkeeper, as belonging to a guest, and as part of his baggage.⁵ Thus where (to the knowledge of the innkeeper) a piano was lent to a guest at an inn (who happened to be a professional pianist) for his use while there, the landlord was held to have no lien on such instrument as against the owner who had lent it.⁶

An innkeeper's lien does not extend to the person of his guest, nor to wearing apparel in actual possession and use.⁷ It extends, however, to horses and carriages brought

¹ *Mullinger v. Florence*, 3 Q. B. D. 484; 47 L. J. Q. B. 700; 42 J. P. 293; 26 W. R. 385.

² See *post*, p. 211.

³ *Day v. Bather*, 2 H. & C. 14.

⁴ [1895] 2 Q. B. 501; 65 L. J. Q. B. 44; 59 J. P. 741; 73 L. T. 252; 44 W. R. 1.

⁵ *Smith v. Dearlove*, 6 C. B. 132; 17 L. J. C. P. 219.

⁶ *Broadwood v. Granara*, 10 Ex. 417; 24 L. J. Ex. 1; 19 J. P. 39.

⁷ *Sundolf v. Alford*, 3 M. & W. 248.

to the inn by guests, and the lien attaches to these, not only in respect of costs of livery, but also in respect of the entertainment of the guest himself.¹ With reference to this, Brett, L.J., in *Mullinger v. Florence*, said, "Where an innkeeper in the course of his ordinary business receives not only travellers but also their horses and carriages, he has an innkeeper's lien for his whole claim. He has one obligation—he is bound to receive the traveller and any horses or carriages he may bring with him; and as there is but one business, one obligation, and one contract, according to the custom of England it gives him one lien, and the lien cannot be split up and a separate lien claimed in respect of separate chattels."² An innkeeper does not waive his lien by taking other security for his unpaid charges.³

An innkeeper, as already indicated, is not liable for goods lost through the negligence of the guest himself. In some cases the omission of a guest to lock the door of his room has been held to amount to such negligence. These decisions do not, however, mean that an innkeeper can shift his responsibility on to the guest by handing him a key for the protection of his goods, it only means that the failure of a guest under particular circumstances to use the means of safety provided may amount to such negligence as to make him the author of his own loss and disentitle him to recover against the innkeeper.⁴

Innkeeper's Liability Acts.—Two Acts have now modified the rigour of the rule at common law as to an innkeeper's responsibility for the safe custody of his guest's goods. The first of these Acts⁵ limits the liability of an innkeeper

¹ *Allen v. Smith*, 12 C. B. (N.S.) 638; 31 L. J. C. P. 306; 6 L. T. 459; 11 W. R. 440; *Day v. Bather*, 2 H. C. 14; 32 L. J. Ex. 171; 8 L. T. 205; 11 W. R. 375; *Turrell v. Crawley*, 13 Q. B. 197; 18 L. J. Q. B. 155; *Mullinger v. Florence*, 3 Q. B. D. 484; 47 L. J. Q. B. 700; 42 J. P. 293; 38 L. T. 167; 26 W. R. 385.

² 3 Q. B. D. at p. 491.

³ *Angus v. Maclachlan*, 23 C. D. 330; 52 L. J. Ch. 587; 31 W. R. 641.

⁴ *Oppenheim v. White Lion*, L. R. 6 C. P. 515; 40 L. J. C. P. 93; 25 L. T. 93; *Herbert v. Markwell*, 46 J. P. 358; 45 L. T. 649; *Cashill v. Wright*, 6 E. & B. 891; 20 J. P. 678. See also *Armistead v. Wilde*, 17 Q. B. 261; 20 L. J. M. C. 521; 16 J. P. 5; *Jones v. Jackson*, 37 J. P. 776.

⁵ 26 & 27 Vict. c. 41.

for loss of or damage to a guest's goods (except in the case of a horse or other live animal, or a carriage) to the sum of £30, in all cases where such goods have neither been stolen, lost, nor injured through the wilful act,¹ nor through the default nor neglect² of the innkeeper or his servant, nor deposited with the innkeeper for safe custody.³ No innkeeper, however, is entitled to the benefit of this Act who does not post in the hall of his inn the notice prescribed by the Act, or who declines to receive goods for safe custody when offered for that purpose by a guest.⁴

In the case of horses and carriages, and in the case also of other articles up to the value of £30, this Act leaves the liability of innkeepers precisely as before.⁵ Therefore, in the case of lost goods over the value of £30, an innkeeper entitled to the benefit of the Act must, if he desires to escape liability for the loss, shew affirmatively that it is due to the negligence of his guest, while the guest to recover more than £30 from such innkeeper, must shew affirmatively that his loss has arisen from the wilful act, or from the default or neglect of his host. Where such evidence is not called for either side the guest, on proving the loss, will be entitled to the £30 but no more.⁶

The rule that an innkeeper is responsible for the safety of his guests' goods, extends also to their persons while in his house, to the extent that he is bound to take proper care for their safety in all places into which guests may reasonably be supposed as likely to go, in the belief reasonably entertained by them that they are entitled and invited to do so.⁷

The second Act, which has mitigated the rigour of the common law as to innkeepers, has allowed the host's lien to be enforced by a sale of the defaulting guest's goods.

¹ *Squire v. Wheeler*, 16 L. T. 93.

² *Huntly v. Bedford Hotel*, 56 J. P. 53.

³ 26 & 27 Vict. c. 41.

⁴ *Ibid.*, §§ 2, 3.

⁵ *Medawar v. Grand Hotel Company*, [1891] 2 Q. B. 11; 60 L. J. Q. B. 209; 55 J. P. 326; 64 L. T. 851.

⁶ *Ibid.*

⁷ *Walker v. Midland Railway Company*, 51 J. P. 116, per Lord Selborne. See also *Sandys v. Florence*, 47 L. J. C. P. 598; 42 J. P. 712.

Formerly, as above mentioned, the lien was lost if the goods were sold, now, however, the innkeeper whose bill has not been paid has a statutory right to sell, at the end of six weeks from the incurring of the undischarged debt, by public auction any goods left in his possession by the debtor. This right of sale extends to all goods, chattels, carriages, wares, and merchandise. One month's notice must be given of the sale as required by the Innkeepers Act, 1878.¹

Rating of Licensed Houses.—The rateable value of property is estimated at the rent at which it might reasonably be expected to let from year to year. In the case of public-houses, the value of the tenements as they stand and are fitted up, the use to which they are applied, their local position, and other like circumstances may properly be considered. These things afford the ordinary elements for estimating rateable value. But neither the particular rent a tenant pays, nor the particular profits or losses of his individual trade, depending perhaps on provident or improvident contracts relating thereto, can be considered. The rateable value is not altered by the actual rent being more or less than the rent the premises would reasonably command from a yearly tenant. Rent is no more than presumptive evidence of value. Therefore, in the case of tied houses, the rent actually paid to the brewer, is not usually the true rateable value; a part of the rent being really paid by the higher price generally obtained in such cases from the tenant for the beer. Hence, in the case of tied houses, the rateable value must be estimated independently of the tie, as if, in fact, the house were a free house; having regard especially to the character of the district, the class of trade which may be done there, and the value of neighbouring houses of the like kind.²

In a recent case an attempt was made to investigate the actual profits made by a publican as a factor in determining the rateable value of his house; but the Court held

¹ See *post*, 41 & 42 Vict. c. 38, § 1.

² See Erle, C.J., and Smith, J., in *Overseers of Sunderland v. Poor Law Union*, 34 L. J. M. C. 121; 18 C. B. (N.S.) 531; 13 L. T. 239.

such evidence inadmissible. "The question," said Lord Esher, M.R., "is not what rent he could afford to give, but what rent an ordinary tenant would give—that is, would he be likely to give," and "in dealing with ordinary business premises, the mode of determining the question is by inquiring what rent is given for similar premises in similar positions in the same place." Therefore an inquiry as to the gross takings or net profits of the actual tenant is wholly immaterial, and, in fact, mischievous and oppressive.¹

In ascertaining the rateable value of licensed premises in a town, the proper course is to call experts, who know the town, and have had dealings in the letting of public-houses, whether tied or free, and who, from their knowledge and experience, can say what rent a tenant would be likely to give from year to year for the house in question.²

At the same time the peculiar position of particular premises may preclude the above mode of estimating the rateable value, and render an inquiry into actual earnings permissible. This will be the case if there is no standard of comparison by which to judge of the value. A particular refreshment-room on a railway system has been held to be such an exception, and evidence admitted of the actual trade there done.³ But this departure from the general rule is only allowed because of necessity.⁴

In rating a canteen, it has been held that the special value attached to the premises by reason of the liquor monopoly connected therewith is to be taken into account.⁵

Actions for the Price of Drink, when not Maintainable.—No action is maintainable in any county or other Court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of

¹ *Dodds v. Union of South Shields*, [1895] 2 Q. B. 133; 64 L. J. M. C. 508; 59 J. P. 452; 72 L. T. 645; 43 W. R. 532.

² *Ibid.*, per Smith, L.J.

³ *Clark v. Fisherton Angar*, L. R. 6 Q. B. D. 139; 50 L. J. M. C. 33; 45 J. P. 358; 29 W. R. 334.

⁴ Per Lord Esher, M.R., in *Dodds v. South Shields Union*, *supra*.

⁵ *Rez v. Bradford*, 4 M. & S. 317.

any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry.¹ In regard to other spirituous liquors consumed on the premises where sold, no such action lies unless the debt *bonâ fide* contracted in respect thereof at one time amounts to twenty shillings or upwards;² while in the case of spirituous liquors sold for consumption off the premises and delivered at the residence of the purchaser, no action lies for a less quantity sold and delivered at any one time than a reputed quart.³

¹ 51 & 52 Vict. c. 43, § 182.

² 24 Geo. II. c. 40, § 12. As to this Act see the following cases, *Owens v. Porter*, 4 C. & P. 367; *Crookshank v. Rose*, 5 C. & P. 19; 1 Moo. & R. 100; *Dawson v. Remnant*, 6 Esp. 24; *Scott v. Gilmore*, 3 Taunt. 226; *Burnyeat v. Hutchinson*, 5 B. & Ald. 241; *Hughes v. Done*, 1 Q. B. 294; 10 L. J. Q. B. 65; *Philpott v. Jones*, 2 Ad. & E. 41; 4 L. J. K. B. 65.

³ 25 & 26 Vict. c. 38.

PART VI.

*THE LICENSING OF THEATRES, MUSIC
HALLS, RACE COURSES, AND PUBLIC
BILLIARD TABLES.*



SECTION XXIV.

THEATRE LICENSES.

Theatre—what is.—The licensing of theatres is regulated by the provisions of the Theatres Act, 1843.¹ A theatre within the meaning of that enactment is a house or other place of public resort for the public performance of stage plays. The words “stage play” include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof.² By § 2 of this Act it is unlawful for any person to have or keep any theatre in Great Britain without authority by virtue of letters patent from Her Majesty, her heirs and successors, or predecessors, or without license from the Lord Chamberlain of Her Majesty’s household for the time being, or from

¹ 6 & 7 Vict. c. 68. See *post*, p. 307, Appendix.

² *Ibid.*, §§ 2, 23. As to what constitutes an entertainment of the stage, see *R. v. Handy*, T. R. 286; *Thorn v. Colston*, 3 L. T. 697; 25 J. P. 101; *Wigan v. Strange*, L. R. 1 C. P. 175; 35 L. J. M. C. 31; 29 J. P. 774; *Day v. Simpson*, 18 C. B. (N.S.) 680; 34 L. J. M. C. 149; 12 L. T. 385; 13 W. R. 748.

the justices of the peace, for whom must now be substituted the County Council.¹ Every person offending against this section is liable to a penalty by way of forfeiture not exceeding £20 for every day upon which he keeps his house open as a theatre without lawful authority. The keeping open does not require to be habitual; keeping open for a single day may be an offence.² At the same time, a person who temporarily hires an unlicensed hall and performs stage plays therein cannot be said to keep a theatre, though he may be liable for performing in an unlicensed place.³ Every theatre must therefore be authorised either by letters patent from the Crown, or licensed by the Lord Chamberlain, or the County Council. The County Council may delegate their licensing powers to a committee of the council, or to the justices of the county sitting in petty sessions.⁴

Patent theatres have never been numerous; they are still represented in the metropolis by Covent Garden Theatre.

Licensing by the Lord Chamberlain.—The jurisdiction of the Lord Chamberlain extends to all theatres (not being patent theatres) within the parliamentary boundaries of the cities of London and Westminster, and of the boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth, and Southwark, New Windsor, in the county of Berks, and Brighton, in the county of Sussex.⁵ The Lord Chamberlain's authority also extends to those places where Her Majesty, her heirs and successors may in their royal persons occasionally reside, so that although the County Council may grant theatre licenses in such places, yet, during the residence of the Crown, no theatres may be there opened without the further license of the Lord Chamberlain.⁶

The County Council.—In all places beyond the jurisdiction of the Lord Chamberlain theatre licenses are now

¹ 51 & 52 Vict. c. 41, §§ 7, 8.

² *Shelley v. Bethel*, 12 Q. B. D. 11; 53 L. J. M. C. 16; 49 L. T. 779; 48 J. P. 244; 32 W. R. 276.

³ *R. v. Strugnell*, L. R. 1 Q. B. 93; 35 L. J. M. C. 78; 13 L. T. 433; 30 J. P. 101; 14 W. R. 193.

⁴ 51 & 52 Vict. c. 41, § 8.

⁵ 6 & 7 Vict. c. 68, § 3.

⁶ The Lord Chamberlain's fee on licensing a theatre shall not exceed ten

granted by the County Council, who are required (as the successors of the justices) within twenty-one days after an application in writing has been delivered to their clerk, signed by the applicant and countersigned by at least two justices acting for the division within which the premises sought to be licensed are situate, to hold a special licensing session. Such session must be an open meeting of the council, and a license when granted must apparently be signed by at least four of the members present.¹

The County Council may at a licensing session, or some adjournment thereof, make rules for the purpose of securing the observance of order and decency in theatres licensed by them, and for regulating the times during which such theatres may be allowed to be open. Rules so made may be rescinded or altered by the council from time to time, on notice given. A copy of all rules in force for the time being is required to be annexed to every theatre license granted by the County Council.² No similar power of making general rules was expressly given by the Act to the Lord Chamberlain, though he was authorised to close patent theatres and theatres licensed by himself in certain eventualities.³ Rules are, however, issued by the Lord Chamberlain for theatres under his control; a copy of those now in force will be found in the Appendix.⁴

In cases of riot, or of disobedience to the rules imposed by the licensing authority, two justices (after proof given on oath before them) may order the theatre in question to be closed for such time as they shall think fit, and during such time the theatre so ordered to be closed is to be deemed to be unlicensed.⁵

A theatre license can only be granted to the actual and responsible manager for the time being; who must, on receiving the license, become bound in such penal sum (not

shillings for each calendar month during the currency of the license. 6 & 7 Vict. c. 68, § 4.

¹ See 6 & 7 Vict. c. 68, § 5. The fee upon these theatre licenses shall not exceed five shillings per month; *ibid.*, § 6.

² *Ibid.*, § 9.

³ *Ibid.*, § 8.

⁴ See *post*, Part VIII.

⁵ 6 & 7 Vict. c. 68, § 9.

exceeding £500) as the licensing authority may require, and find, in addition, two sufficient sureties (for sums not exceeding £100 each), to be approved by the Lord Chamberlain or the council, as the case may be.¹

In the case of theatres other than patent theatres the manager's name and place of abode must be printed on every bill announcing a theatrical representation.¹

Theatres at Oxford and Cambridge are governed by special provisions. No license for a theatre can be in force in the precincts of either University, or within fourteen miles of the city of Oxford or the town of Cambridge without the consent of the Chancellor or Vice-Chancellor of each University respectively; and all rules for the management of licensed theatres within such limits are subject to the approval of the University authority. The Chancellor or Vice-Chancellor is also empowered, upon breach of such rules or of any condition imposed by him as the price of his consent, to annul the license.²

Unlicensed Acting—Penalty.—Any person who for hire acts, or presents, or causes, permits or suffers to be acted or presented, any part in any stage play, in any place not being a patent theatre, or duly licensed as a theatre, is liable to a penalty not exceeding £10 for every day on which he shall so offend.³

Acting for hire⁴ includes every case in which any money or other reward is taken or charged, directly or indirectly, or in which the purchase of any article is made a condition for the admission of any person into any theatre to see any stage play, and also every case in which any stage play is acted or presented in any house, room, or place in which distilled or fermented exciseable liquor is sold.⁵ Nor does it make any difference that the money taken is for a charitable object only.⁶

Where proceedings are instituted against any person

¹ 6 & 7 Vict. c. 68, § 7.

² *Ibid.*, § 10.

³ *Ibid.*, § 11. *R. v. Strugnell*, L. R. 1 Q. B. 93. *Fredericks v. Payne*, 32 L. J. M. C. 14; 1 H. & C. 584; 27 J. P. 104.

⁴ *Davys v. Douglas*, 4 H. & N. 180.

⁵ 6 & 7 Vict. c. 68, § 16.

⁶ *Shelley v. Bethel*, 12 Q. B. D. 11; 53 L. J. M. C. 16; 48 J. P. 244.

for having or keeping an unlicensed theatre, or for acting for hire in an unlicensed theatre, the prosecution must prove that such theatre is used for the public performance of stage plays, but thereafter the *onus* is upon the person accused to shew that the theatre in question was duly licensed, and if this be not affirmatively shewn by such person the theatre is presumed to have been unlicensed.¹

Lord Chamberlain's Censorship over New Plays.—A jurisdiction by way of censorship is also vested in the Lord Chamberlain over all new plays or new additions to old plays, intended to be produced and acted for hire at any theatre in Great Britain; and such may not be produced nor acted until the Lord Chamberlain has had the statutory opportunity of allowing or disallowing the play, or any part thereof.

For this purpose a copy of every new stage play, and of every new act, scene, or other part added to any old stage play (including prologue and epilogue), must be sent to the Examiner of Stage Plays at the Lord Chamberlain's office, seven days at least before the first acting or presenting thereof. This copy must be accompanied by an account of the theatre where, and the time when, the play is intended to be first acted or presented, signed by the master or manager, or one of the masters or managers, of such theatre.² A penalty not exceeding £50 is imposed upon every person who, for hire, acts or presents or causes to be acted or presented any play disallowed by the Lord Chamberlain, or any new play before such play has been allowed by him.³ In addition to this penalty, if the theatre is a licensed theatre, the license on a conviction of the above offence becomes void. A stage play once allowed by the Lord Chamberlain may be acted, in any

¹ 6 & 7 Vict. c. 68, § 17.

² *Ibid.*, § 12. The reading fee (payable for the examination of the play) must be paid when the play is sent to the examiner; and the seven days do not begin to run until this fee is paid (see § 13). The fee is one guinea for every play of less than three acts, and two guineas for every other play.

³ 6 & 7 Vict. c. 68, § 15.

lawful place, by any person, without further sanction until the license is revoked.

Besides his censorship over new plays, the Lord Chamberlain may, whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or the public peace so to do, forbid the acting or presenting of any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, anywhere in Great Britain, or in such theatres as he shall specify, either absolutely, or for such time as he shall think fit.¹

Penalties under 6 & 7 Vict. c. 68 are recoverable either by action, or summarily before two justices of the peace. In default of payment, the penalty and costs may be enforced by distress; failing a sufficient distress, the offender may be imprisoned for a period not exceeding six calendar months.² An appeal lies to Quarter Sessions by any person aggrieved by a conviction.³ Prosecutions under the Act must be commenced within six calendar months after the commission of the offence.⁴

Unlicensed Theatres in the Metropolis.—Under the Metropolitan Police Act, 1839,⁵ the police authorities may authorise any superintendent of the metropolitan police to enter unlicensed places which are being kept or used for the performance of stage plays and into which admission is obtained by payment of money, and take into custody persons found therein without lawful excuse. A penalty not exceeding £20, or, in the discretion of the magistrate, two months' hard labour, may be imposed under that Act upon any person keeping, using, or knowingly letting the premises for the purposes of an unlicensed theatre, while the performers on such premises are liable to a penalty not exceeding 40s.

Under the same statute the metropolitan police have power to make regulations to control the traffic in the neighbourhood of theatres and other places of public resort.⁶

¹ 6 & 7 Vict. c. 68, § 14.

² *Ibid.*, § 19.

³ *Ibid.*, § 20.

⁴ *Ibid.*, § 22.

⁵ 2 & 3 Vict. c. 47, § 46.

⁶ *Ibid.*, §§ 52, 54.

Discretion of Authority.—The orders and regulations under which the London County Council and the Middlesex County Council exercise their jurisdiction over theatre licenses are the same as those applicable to music and dancing, and will be found in the Appendix.

The justices formerly, and the County Council now, have a full discretion to grant or refuse theatre licenses. It is a discretion, however, which, as in the case of liquor licenses, the licensing tribunal ought to exercise not arbitrarily, but according to the rules of reason and justice.¹ The character of the applicant and the suitability of the building are matters they ought to consider and weigh carefully.² The circumstance that the holder of a theatre license is practically, as a matter of course, entitled on application to an excise license authorising the sale of intoxicating liquors in his theatre, is also a circumstance which the County Council may properly take into consideration on hearing an application for a theatre license; and if, having regard to the other facilities in obtaining drink in the vicinity of the particular theatre sought to be licensed, they impose a condition that the licensee shall not apply for a liquor license under 5 & 6 Wm. IV. c. 39, § 7, the High Court will not interfere with such exercise of their discretion.³

For the protection of the public attending theatres and other like places of public entertainment, provisions have been enacted requiring the owners to comply with certain structural conditions; these apply equally to music halls, and will be found under that head.

¹ As to the impropriety of members of the County Council acting both as opponents and judges in licensing matters, see *R. v. London County Council* [1892], 1 Q. B. 190; 56 J. P. 8; 66 L. T. 168; 40 W. R. 285.

² *Ex parte Harrington*, 4 T. L. R. 435.

³ *R. v. West Riding County Council*, [1896] 2 Q. B. 386; 65 L. J. M. C. 136; 75 L. T. 252; 44 W. R. 650; 60 J. P. 550.

SECTION XXV.

MUSIC AND DANCING LICENSES.

LICENSES for music and dancing must be considered as falling under one or other of three distinct heads: (1) licenses for premises within the cities of London and Westminster, or any place (not being in the administrative county of Middlesex) within twenty miles thereof; (2) licenses for premises in the administrative county of Middlesex; (3) licenses for premises in the provinces and outside the above areas.

1. Music and Dancing Licenses in London and Westminster. — The principal statute relating to music and dancing is the Disorderly Houses Act, 1751.¹ This Act was adopted to regulate places of public entertainment in the cities of London and Westminster, and an area of twenty miles therefrom; but §§ 2 and 3 are now repealed so far as relates to the administrative county of Middlesex, for which special provisions have recently been enacted.² The Disorderly Houses Act, however, still remains the principal statute bearing on music and dancing, and the decisions under its provisions have settled the existing law on this subject.

By § 2 every house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof, without a license had for that purpose, shall be deemed a disorderly house or place;

¹ 25 Geo. II. c. 36; see Appendix, *post*.

² 57 & 58 Vict. c. 15.

and any constable or other person thereunto authorised by a justices' warrant may enter such house or place and seize persons found therein; and any person keeping such house, room, garden, or place, is punishable as the keeper of a disorderly house, and is liable to forfeit a sum of £100 to such person as shall sue for the same.

Thus, every house, room, garden, or place kept within the specified area for any of the above purposes without a license is *ipso facto* a disorderly house, and the keeper liable to punishment on that footing. Whether, in fact, the offending premises are disorderly or not is immaterial.¹ Nothing is said in the section about keeping such premises for profit, and whether money is taken by the keeper or not is also immaterial. At the same time the house, room, or place must be shewn to have been kept for one of the purposes specified in the above section.² A mere temporary use of a room for music and dancing is not within the section.³ The dancing and music must be by way of public entertainment, *i.e.* an entertainment to which members of the public are admitted indiscriminately. The circumstance that a fee is charged for admission, provided any one willing to pay such fee is admitted, does not alter the indiscriminate character of the entertainment;⁴ but where certain persons only are admitted, as *e.g.* the pupils of a dancing master and a limited number of their friends, the entertainment is not public and not within the Act.⁵ To bring a case within the section, the music and dancing must be an essential part of the entertainment, and not merely accessories to it.⁶ It is not necessary, however, that the room should be kept solely for dancing or music.⁷ A room where sacred music is

¹ *R. v. Wolf*, 13 J. P. 428; *Green v. Botheroyd*, 3 C. & P. 471.

² *Archer v. Willingrice*, 4 Esp. 186; *Green v. Botheroyd*, *supra*; *Frailing v. Messenger*, 16 L. T. (N.S.) 497; 31 J. P. 423.

³ *Shutt v. Lewis*, 5 Esp. 128; *Gregory v. Tuffs*, 6 C. & P. 271; *Syers v. Conquest*, 37 J. P. 342; 28 L. T. (N.S.) 402; 21 W. R. 524.

⁴ *Clarke v. Searle*, 1 Esp. 25.

⁵ *Bellis v. Burghall*, 2 Esp. 722.

⁶ *Quaglieni v. Mathews*, 6 B. & S. 474; 34 L. J. M. C. 116; 29 J. P. 439; 11 Jur. (N.S.) 636.

⁷ *Gregory v. Tuffs*, 6 C. & P. 271; *Bellis v. Beal*, 2 Esp. 592; *Hall v. Green*, 9 Ex. 247; *Gregory v. Tavenor*, 6 C. & P. 281.

publicly performed and a lecture given has been held not to be within the statute, and consequently not to require a license.¹ A skating rink, where skating takes place accompanied by music, is, however, within the Act, as falling under the words "public entertainment of the like kind."²

The law upon the foregoing points was concisely summed up, in *Marks v. Benjamin*,³ by Parke, B., as follows: "In the first place, the house or room must be kept with the defendant's knowledge: secondly, it must be kept for the purpose prohibited by the statute; there must be something like an habitual keeping of it, which, however, need not be at stated intervals: thirdly, it must be public, to which all persons have a right to go, whether gratuitously or on payment of money, no matter whether paid to the defendant or not, if he knows of the payment. All these are questions to be left to the jury. There would be a difficulty in making the owner of a private house liable, because that is kept for the purpose of occupation, whereas a public-house is kept for entertainment; and a much less number of instances may be sufficient to render the owner liable for keeping it for the purposes mentioned in the statute."

The penalty of £100 imposed on an offender is recoverable by a common informer. It is only recoverable once, and it is not a cumulative penalty from day to day. It is the keeper of the house who is liable to the penalty. Section 8 of the Disorderly Houses Act defines the word "keeper" as including any person appearing, acting, or behaving as master or mistress, or as the person having the care, government, or management of the house.⁴

¹ *Baxter v. Langley*, 38 L. J. M. C. 1; 32 J. P. 805.

² *R. v. Tucker*, 2 Q. B. D. 417; 46 L. J. M. C. 197; 36 L. T. (N.S.) 478; 13 Cox, C. C. 1600; 41 J. P. 294; 25 W. R. 697. See, also, as to Sunday entertainments, *Terry v. Brighton Aquarium*, L. R. 10 Q. B. 306; 44 L. J. M. C. 173; 39 J. P. 519; 32 L. T. 458; *Warner v. Brighton Aquarium*, L. R. 10 Ex. 291, and 21 Geo. III. c. 49.

³ 5 M. & W. 568; 3 Jur. 1194.

⁴ As to the meaning of a similar definition in an early Act, see *Reid v. Wilson*, [1895] 1 Q. B. 315; 64 L. J. M. C. 60; 59 J. P. 516; 71 L. T. 739; 43 W. R. 161.

In addition to the statutory penalty, an offender is also liable as the keeper of a disorderly house, and to an indictment for a common nuisance.¹

County Council Licensing Authority.—The license required by the principal Act is an annual license, formerly obtained upon application to the justices of the peace at the Michaelmas Quarter Sessions. It could not be granted at an adjourned session, and no fee or reward was payable in respect of it.² The license might be granted either as a license for music or for dancing, or for both,³ and the justices might on each recurring application grant or refuse the license as they saw fit in the exercise of their discretion.

Now by the Local Government Act, 1888, the jurisdiction to grant these licenses, so far as it is conferred by any general Act, is transferred to the County Council.⁴ Within the County of London, therefore, these licenses are now granted every Michaelmas by the London County Council. The council cannot take evidence on oath,⁵ and have not the judicial powers of justices of the peace; but, in hearing applications for these licenses, they must act judicially and exercise their discretion according to the rules of reason and justice.⁶

Every house, room, garden, or other place licensed under the Disorderly Houses Act is required to have affixed and kept up in some notorious place, over the door or entrance, an inscription in large capital letters in the words following: "Licensed pursuant to Act of Parliament of the twenty-fifth of King George the Second;" and it

¹ *Garret v. Messenger*, L. R. 2 C. P. 583; 36 L. J. C. P. 337; 31 J. P. 423; 10 Cox 498; *R. v. Higginson*, 2 Burr. 1232; cf. *Apothecaries' Company v. Jones*, [1893] 1 Q. B. 89.

² 25 Geo. II. c. 36.

³ *Brown v. Nugent*, L. R. 6 Q. B. 693; L. R. 7 Q. B. 588; 40 L. J. M. C. 217; 41 L. J. M. C. 166; 26 L. T. (N.S.) 880; 20 W. R. 89; 36 J. P. 22.

⁴ 51 & 52 Vict. c. 41, § 3 (5).

⁵ *Ibid.*, § 78.

⁶ *R. v. London County Council*, [1892] 1 Q. B. 190; 61 L. J. M. C. 75; 66 L. T. (N.S.) 168; 56 J. P. 8; 40 W. R. 285; *Royal Aquarium v. Parkinson*, [1892] 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. (N.S.) 513; 56 J. P. 404; 40 W. R. 450.

has been held that the absence of this statutory notice is *prima facie* evidence that the house is unlicensed.¹

Hours of Closing.—Formerly no house, room, garden, or place licensed for public dancing, music, or other public entertainment of the like kind, was allowed to be opened for the licensed purpose before five o'clock in the afternoon,² but now such premises may be opened any hour after the hour of noon.³

The above-mentioned provisions as to notice and as to the hour of opening are required to be made conditions of the license; and any breach of either of these conditions forfeits the license.² Moreover, where a license is so forfeited it cannot be renewed, nor may any new license for music, or dancing, or any public entertainment of the like kind, whether for the same or any other premises, be granted to the same person or persons, or to any other person on his or their or any of their behalf, or for their use or benefit directly or indirectly.²

One exception to the general rule as to the hour of opening places licensed for music and dancing is permitted by the Public Entertainments Act, 1875,³ which provides that if on any special occasion an occasional license of exemption shall have been granted under § 29 of the Licensing Act, 1872, in respect of any house, room, garden, or other place licensed under 25 Geo. II. c. 36, no penalty or forfeiture shall be incurred for contravention of § 3 of that Act (as amended) on account of such house, room, garden, or other place being kept open for any public dancing, music, or other public entertainment of the like kind on such special occasion from midnight until the hour specified in such occasional license as the hour of closing.⁴

The Disorderly Houses Act does not apply to performances and public entertainments lawfully carried on in

¹ *Gregory v. Tuffs*, 6 C. & P. 271.

² 25 Geo. II. c. 36, § 3.

³ 38 & 39 Vict. c. 21, § 1.

⁴ § 3, as amended, prohibits the opening of such places before the hour of noon; see *post*, Appendix.

patent theatres or theatres licensed by the Crown or the Lord Chamberlain. A music and dancing license does not authorise the performance of stage plays.¹

Structural Supervision and Provisional Licenses.—As a stringent structural supervision is now exercised over all theatres and music halls in London, the licensing authority has been empowered to grant a provisional license in the case of new premises about to be constructed or in course of construction.² A provisional license has no force until it is confirmed by the licensing authority, but the holder is entitled to have it confirmed on the production of a certificate that the construction of the premises has been completed in accordance with the regulations and conditions made by the council, unless there is some objection to his personal character.³

Under § 21 of the Metropolis Management Act, 1878, the architect of the council and the district surveyor may enter upon and inspect any premises intended for the public performance of stage plays, or for public dancing, music, or the like entertainments, at all reasonable times during the construction, or three months after the completion, of such premises.

Under the same section, the London County Council (as the successors to the Metropolitan Board of Works)⁴ have power in the case of all theatres and in the case of such music halls as contain a superficial area for the accommodation of the public of not less than five hundred square feet, which were in use in the Metropolis at the time of the passing of that Act, and the defective structure of which renders them specially dangerous to the public in the case of fire, to require the owner by notice (if such defective structure can be remedied at a moderate cost) to remedy the defects (under pain of a penalty) within a specified time. This notice cannot be served in the case of theatres licensed by the Lord Chamberlain without his

¹ See § 4, and *Levy v. Yates*, 8 A. & E. 129; *Day v. Simpson*, 18 C. B. (N.S.) 680; 34 L. J. M. C. 149; 13 W. R. 748; 12 L. T. (N.S.) 386.

² Metropolis Management Act, 1878, 41 & 42 Vict. c. 32, § 13.

³ *Ibid.*

⁴ 51 & 52 Vict. c. 41, § 40 (8).

consent, nor in any other case without the consent of the Secretary of State. When served, the owner has under the section a right of appeal.

Protection from Fire.—Under § 12 of the same Act, the council have power to make regulations as to the requirements which they deem necessary in theatres and music halls for the protection of the public from fire. And after the making of any such regulation, it is not lawful for any person to have or keep open such premises in the metropolis without first obtaining a certificate¹ from the council that his premises comply with the regulation in so far as it may be applicable to them. Any person opening or keeping open premises in contravention of the provisions of this Act is liable to a daily penalty not exceeding £50. But the council may modify or dispense with the regulations in any special case.

The regulations now in force are those adopted by the council on the 9th of February, 1892.² These regulations apply to all theatres, houses, rooms, or other places of public resort kept open for the public performance of stage plays, and to all houses, rooms, or other places of public resort kept open for public dancing, music, or other public entertainment of the like kind, within the administrative county of London, except such premises as are authorised by letters patent, or by licenses granted for the first time before the passing of the Metropolis Management Act, 1878.

Every person desirous of obtaining authority to open premises to which these regulations apply must first make application in writing to the clerk of the council for the certificate required by the Act. This application must contain a statement shewing the applicant's interest in the premises, and the character of the entertainment for which they are intended to be used; further, it must be

¹ *R. v. Hannay*, [1891] 2 Q. B. 709; 60 L. J. M. C. 167; 56 J. P. 151; 40 W. R. 14.

² The purport of some of the principal regulations only is stated in the text. Copies of these regulations may be obtained from Mr. Edward Stanford, 26 & 27, Cockspur Street, Charing Cross.

accompanied by complete plans, giving the elevations, sections, position of the site, and the numbers of the persons intended to be accommodated in the various parts of the house. A specification of any works it is proposed to execute must also be sent to the clerk.

Licensed premises must abut upon public thoroughfares and be enclosed with proper external or party walls of brick or stone. Not more than three tiers, or horizontal divisions (including the gallery), are allowed above the level of the pit. Separate exits leading into different thoroughfares must be provided for every tier, or floor, of the premises, and so arranged as to afford a ready means of egress from both sides of such tiers.

In all premises where a stage with a proscenium is erected such stage shall be separated from the auditorium by a brick wall not less than thirteen inches in thickness. The proscenium opening must be provided with a fire-resisting screen to be used as a drop curtain.

Staircases, lobbies, corridors, and passages are to be formed of fire-resisting materials, and must be of a width varying from four feet six inches to nine feet, according to the number of the persons intended to use them.

All doorways used by the public must be at least four feet six inches wide, and the doors are required to be hung in two folds and made to open outwards. No locks, monkey-tail flush or barrel bolts, or locking bars, or other obstructions to exit may be used on any doors, gates, or barriers.

All premises containing a superficial area for the accommodation of the public of one thousand feet and upwards must be provided with a sufficient number of hydrants; and, if there is not otherwise a constant supply of water, also with two cisterns of a prescribed size, to be kept always filled with water.

Wet blankets and rugs, as well as buckets filled with water, must be kept always on the stage.

These regulations also contain special provisions as to the lighting of premises by gas and by electricity. Where

electric lighting is permitted, it is a condition that a competent electrical engineer shall certify in writing to the satisfaction of the council once in every six months that the system is in proper working order.

If it is proposed to add to or alter the structure of any premises in respect of which a certificate has been granted by the council, notice of the intended alteration must be sent to the clerk, with plans and a specification of the work to be done.

The council may from time to time modify or dispense with the regulations made by it under the Metropolis Management Act, 1878. All applications for dispensations or modifications must be addressed in writing to the clerk of the council, and contain a statement of the facts of the particular case, and the reasons why it is desired to modify or dispense with the regulations which would otherwise be applicable thereto.

The person in whose name the license is granted is held responsible by the council for the carrying out of the regulations for the management of the premises and for the safety of the public and of employees in the event of fire.

The issuing of a certificate under the Metropolis Management Act, 1878, though a condition precedent (where required) to the granting of a license, does not preclude the council from otherwise considering on its merits any application for a license in respect of the certified premises.

2. Music and Dancing Licenses in the County of Middlesex.

—In the county of Middlesex, §§ 2 and 3 of the Disorderly Houses Act, 1751, are repealed, and a special Act now regulates in that county all places ordinarily used for public dancing or music, or other public entertainment of the like kind.¹

Under this Act the County Council of Middlesex is the licensing authority, without whose license no house, room, garden, or other place (whether licensed or not for the sale of wines, spirits, beer, or other fermented or distilled liquors),

¹ 57 & 58 Vict. c. 15 § 2 (12), see *post*, p. 500.

may be kept or used for public dancing, singing, music, or other public entertainment of the like kind.¹

A registration fee of 5s. is payable by the person applying for the license of the council, unless granted for the purposes of a charitable or other like entertainment.¹

The Middlesex County Council are not restricted (like the London County Council) to any particular time of year in granting music and dancing licenses. They may grant or transfer such licenses at any meeting convened with fourteen days' previous notice, or at any adjournment of such meeting. They may impose in their licenses such terms and conditions and restrictions as they think fit. A license granted by them is a license for one year, unless on granting it they specify a shorter period for its duration.²

Persons applying for a grant or transfer must give fourteen days' notice to the clerk of the County Council, and to the superintendent of police of the police division in which the house, room, garden, or place is situated.³ But where the application is for the renewal of an existing license for the same premises⁴ or for a limited license for a period not exceeding fourteen days no notice is required.⁵

As in the case of the principal Act, a notice is required to be affixed on the door or entrance of the licensed premises. The notice must be "an inscription in large capital letters, in the words following: 'Licensed in pursuance of Act of Parliament for ,' with the addition of words shewing the purpose for which the house is licensed."⁶

Licensed premises may only be opened for the licensed purposes on the days and between the hours stated in the license. But in no case save one shall they be open after midnight and before the hour of noon. That exception is the case of premises for which an occasional exemption license, under § 29 of the Licensing Act, 1872, has been granted. Such premises may, on the special occasion covered

¹ 57 & 58 Vict. c. 15, § 2 (1).

² § 2 (2) (3).

³ § 2 (4) ⁴ § 2 (10).

⁵ § 2 (11). But see the Regulations of the Middlesex County Council, *post*, Appendix, pp. 537-539.

⁶ § 2 (6).

by the exemption license, be kept open for music and dancing until the hour specified in the occasional license.¹ The affixing of the required notice and the observance of the hours of closing must be inserted as conditions in every license.²

A breach of the conditions of a license or of the terms upon which it has been granted renders the holder liable, on summary conviction, to a penalty not exceeding £20, and to a further penalty, not exceeding £5 per day, for each day on which the offence is continued after such conviction. In addition to the foregoing penalty, the license may be revoked by the County Council.³

Any house, room, garden, or place kept or used for public dancing or music, or other entertainment of the like kind, in the county of Middlesex, without first being licensed by the council, shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable, on summary conviction, to a penalty not exceeding £5 for every day on which the same is kept or used for any of the purposes aforesaid; and it shall be lawful for any constable, being thereunto authorised by warrant under the hand of one of Her Majesty's justices of the peace for the county of Middlesex, to enter any such house, room, garden, or place, so kept or used without such license as aforesaid, and to apprehend every person who shall be found there, in order that they may be dealt with according to law.⁴

The powers by this Act conferred upon the Middlesex County Council are in addition to and not in derogation of any of the powers of licensing otherwise vested in that body.⁵

All applications to the County Council of Middlesex for music and dancing and stage-play licenses must now be made in conformity with the standing orders of the council made on the 25th of April, 1895.⁶

3. Music and Dancing Licenses in the Provinces.—It has

¹ 57 & 58 Vict. c. 15, § 2 (7).

² § 2 (8).

³ § 2 (9).

⁴ § 2 (5).

⁵ § 2 (14).

⁶ As to the regulations provided by these Orders, see *post*, p. 536.

already been pointed out that the provisions of the principal Act, 25 Geo. II. c. 36, only apply to London and Westminster, and an area of twenty miles therefrom. In many cases, however, similar provisions are now in force in provincial districts under local Acts.¹ Where this is the case, the law as already stated with reference to licenses in London and Westminster will apply. It must be remembered, however, that the transfer of jurisdiction from the justices to the County Council, so far as licenses for music and dancing are concerned, only takes effect under the Local Government Act, 1888, in those cases where the justices' jurisdiction has been given them under a general Act.² Therefore, unless the local Act relative to any particular provincial district expressly vests this jurisdiction in the County Council, the jurisdiction over licenses for music and dancing will remain, so far as such district is concerned, in the justices.

With the object, apparently, of mitigating the present anomalous state of the law, under which no general Act exists regulating licenses for music and dancing outside the specified area round London and Westminster, the Public Health Amendment Act, 1890,³ has enacted certain provisions which, when adopted by an urban authority in the manner directed by § 3 of that Act, or by a rural sanitary authority invested by the Local Government Board under § 5 with an urban authority's powers of adoption, control within the district of such authority all music and dancing licenses. These provisions (which are excluded from application within the radius of the principal Act) vest the jurisdiction over these licenses in those justices who are the licensing justices for the purposes of the Licensing Acts, 1872 and 1874; otherwise these provisions are substantially the same as those contained in the Middlesex Act, 1894. These provisions, enacted by § 51, are as follows:—

1. After the expiration of six months from the adoption

¹ See *Hoffman v. Bond*, 32 L. T. (N.S.) 775; 40 J. P. 5.

² See *ante*, p. 225.

³ 53 & 54 Vict. c. 59, Part IV.

of this part of this Act, a house, room, garden, or other place, whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind without a license for the purpose or purposes for which the same respectively is to be used first obtained from the licensing justices of the licensing district in which the house, room, garden, or place is situate, and for the registration thereof a fee of 5s. shall be paid by the person applying therefor.

2. Such justices may, under the hands of a majority of them assembled at their general annual licensing meeting or at any adjournment thereof, or at any special session convened with fourteen days' previous notice, grant licenses to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid, upon such terms and conditions and subject to such restrictions as they by the respective licenses determine; and every license shall be in force for one year, or for such shorter period as the justices on the grant of the license shall determine, unless the same shall have been previously revoked, as hereinafter provided.

3. Such justices may from time to time, at any such special session aforesaid, transfer any such license to such person as they think fit.

4. Each person shall in each case give fourteen days' notice to the clerk of the licensing justices and to the chief officer of police of the police district in which the house, room, garden, or place is situated, of his intention to apply for any such license or for the transfer of any such license.

5. Any house, room, garden, or place kept or used for any of the purposes aforesaid without such license first obtained shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable to a penalty not exceeding £5 for every day on which the same is kept or used for any of the purposes last aforesaid.

6. There shall be affixed and kept up, in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid, an inscription in large capital letters, in the words following: "Licensed in pursuance of Act of Parliament for _____," with the addition of words shewing the purpose or purposes for which the same is licensed.

7. Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes, except on the days and between the hours stated in the license.

8. The affixing and keeping up of such inscription as aforesaid, the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such license.

9. In case of any breach or disregard of any of the terms or conditions upon or subject to which the license was granted, the holder thereof shall be liable to a penalty not exceeding £20, and to a daily penalty not exceeding £5, and such license shall be liable to be revoked by the order of a Court of summary jurisdiction.

10. No notice need be given under sub-sect. 4 of this section when the application is for a renewal of any existing license held by the applicant for the same premises.

11. The justices in any petty sessions may, if and as they think fit, grant to any person applying for the same license to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days, which they shall specify in such license, notwithstanding that no notices shall have been given under sub-sect. 4 of this section.

12. This section shall not apply within twenty miles of the cities of London or Westminster.

13. In this section the expressions "licensing justice," "licensing district," and "clerk of the licensing justices," have respectively the same meanings as in the Licensing Acts, 1872-1874; the expression "police district" means any area for which a separate police force is maintained.

and the expression "chief officer of police" means the chief constable, head constable, or other officer, by whatever name called, having the chief command of such separate police force.

The "daily penalty," mentioned in sub-sect. 9 above, means a penalty for each day on which any offence is continued after conviction therefor.¹

The penalties imposed by this Act are to be recovered before a Court of summary jurisdiction.² Proceedings can be taken only by the local authority, or party aggrieved, or a person having the written consent of the Attorney-General.³

An appeal against the conviction lies, as provided by the Summary Jurisdiction Acts, to the Court of Quarter Sessions.⁴

Structural Provisions.—By §§ 110, 111, and 112 of the Towns Improvement Act, 1847,⁵ which may be incorporated in any local Municipal Act, any person intending to build any place of public amusement or entertainment is required to submit a plan shewing the proposed means of supplying fresh air in the intended building to commissioners under that Act, and to obtain their approval.

The Public Health (Amendment) Act, 1890,⁴ also contains the following provision as to the construction of buildings of public resort, which may be adopted by the local authority.

(1) Every building which, after the adoption of this part of this Act in any urban district, is used as a place of public resort, shall, to the satisfaction of the urban authority, be substantially constructed, and supplied with ample, safe, and convenient means of ingress and egress for the use of the public, regard being had to the purposes for which such building is intended to be used, and to the number of persons likely to be assembled at any one time therein.

¹ 53 & 54 Vict. c. 59, § 11 (3).

² 38 & 39 Vict. c. 55, § 251.

³ *Ibid.*, § 253.

⁴ 53 & 54 Vict. c. 59, § 36.

⁵ 10 & 11 Vict. c. 34.

(2) The means of ingress and egress shall, during the whole time that such building is used as a place of public resort, be kept free and unobstructed to such extent as the urban authority shall require.

(3) An officer authorised in writing by the urban authority, and producing his authority if so required, may, at all reasonable times, enter any such building to see that the provisions of this section are carried into effect.

(4) Any person who, being the occupier, or manager, or in the case of a building let for any period less than one year the owner of any building used as aforesaid, uses the same, or suffers the same to be used in contravention of this section, or fails to comply with the provisions of this section in respect thereof, shall, for every such offence, be liable to a penalty not exceeding £20.

(5) Where any alteration in the building is required in order to give proper means of ingress or egress, the Court may refuse to inflict a penalty for an offence under this section until a reasonable time has been allowed for making such alteration; but the Court may make such order as they think fit for the closing, or otherwise, of the building during such time.

(6) For the purposes of this section the expression "place of public resort" means a building used, or constructed or adapted to be used, either ordinarily or occasionally as a theatre, public hall, public concert room, public ball room, public lecture room, or public exhibition room, or as a public place of assembly for persons admitted thereto by ticket or by payment, or used, or constructed or adapted to be used, either ordinarily or occasionally for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes.

The provision in § 72 of the Licensing Act, 1872, excepting theatres from the operation of that Act, is limited to theatres properly so called, and has no application to other places of public entertainment. So much, therefore,

of 5 & 6 Wm. IV. c. 39, s. 7, as empowered the Commissioners of Excise to grant licenses for the sale of drink in places licensed for music and dancing, etc., without the production of a justices' liquor license, is now repealed, and in the case of all music halls and places of the like kind (not being theatres properly so called) a justices' authorisation is now required for the sale of intoxicating liquors.¹

An exception from the ordinary rule requiring theatres and music halls to be licensed exists in favour of the army. By the Army (Annual) Act, 1889,² it is provided that where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind, or for the public performance of stage plays without any license under 25 Geo. II., c. 36, or 6 & 7 Vict. c. 68, or either of them.

¹ See *R. v. Inland Revenue*, 21 Q. B. D. 569; 57 L. J. M. C. 92; 59 L. T. 378; 52 J. P. 390; 36 W. R. 696.

² 52 Vict. c. 3, § 7.

SECTION XXVI.

RACE-COURSE AND BILLIARD LICENSES.

Race-course Licenses.—Horse-races held within a radius of ten miles from Charing Cross in the city of Westminster are unlawful unless held in some place licensed for the purpose under the Race-courses Licensing Act, 1879.¹

Licenses for horse-racing within the above area can only be granted to the owner, lessee, or occupier of the place licensed. They were formerly granted by the justices at the Michaelmas Quarter Sessions, but are now granted by the County Council.² The license is a license for one year, and dates from the 25th of March next following the date of the application. The council have a full discretion to grant or refuse a license, as they think right.³ The applications for these licenses are to be made in the same manner as those for music and dancing, under 25 Geo. II., c. 36.⁴

Persons taking part in unlicensed race meetings, and owners and occupiers of the grounds so used are liable under this Act, upon conviction, to punishment by way of fine or imprisonment,⁵ and every unlicensed horse-race is declared to be a nuisance at common law.⁶ A horse-race within the meaning of this Act is any race in which any horse, mare, or gelding shall run, or be made to run in competition with any other horse, mare, or gelding, or against time, for any prize of what nature or kind soever, or for any bet or wager made, or to be made, in respect of

¹ 42 & 43 Vict. c. 18, § 2.² 51 & 52 Vict. c. 41, § 3 (v.).³ Ibid.⁴ Ibid., § 4.⁵ Ibid., §§ 5, 6.⁶ Ibid., § 7.

any such horse, mare, or gelding, or the riders thereof, and at which more than twenty persons shall be present.¹

Billiard Licenses.—The holder of a victualler's license under the Alehouse Act, 1828, is entitled to keep a public billiard table upon his licensed premises without obtaining any further license in that behalf.² But all other persons desiring to keep a billiard table, bagatelle board, or other instrument used in any game of the like kind for public use must be duly licensed under the Gaming Act, 1845. Billiard licenses are granted by the licensing justices at the general annual licensing meeting,³ and the justices have full discretion to grant or refuse the license as they think fit. Their decision is final, as there is no appeal.⁴ If the license applied for is a new license, the applicant must give (as near as may be) the same notices that are required prior to an application for a new liquor license. If the application is for a renewal of an existing billiard license no notices are required.⁵

A billiard license, when granted, remains in force for one year,⁶ and terminates at the same period as a liquor license, *i.e.* on the 5th of April in Middlesex and Surrey, and on the 10th of October elsewhere. Transfers of billiard licenses may be granted by the special licensing sessions,⁷ and applicants for such transfers must give the same notices as are required in the case of applications for the transfer of liquor licenses.⁸

Conditions of License.—A billiard license imposes the following conditions⁹ upon the holder thereof: (1) the licensee must put and keep up, legibly printed in some conspicuous place near the door and on the outside of his house, the words "Licensed for billiards;" (2) he must not wilfully or knowingly permit drunkenness or other disorderly conduct in his house; (3) he must not knowingly permit the

¹ 51 & 52 Vict. c. 41, § 1.

² 8 & 9 Vict. c. 109, § 11.

³ *Ibid.*, § 10.

⁴ *R. v. Devonshire*, 21 J. P. 773; 8 E. & B. 644; 30 L. T. (O.S.) 150; 6 W. R. 75.

⁵ See L. A. 1872, § 75.

⁶ 8 & 9 Vict. c. 109, § 10.

⁷ *Ibid.*

⁸ L. A. 1872, § 75.

⁹ 8 & 9 Vict. c. 109, schedule, *post*, p. 324.

consumption of exciseable liquors therein by persons resorting thereto (this prohibition does not extend to beer, which is not now an exciseable liquor);¹ (4) he must not knowingly permit the playing of unlawful games in his house; (5) he must not knowingly permit the assembling of persons of notoriously bad character in his house; (6) he must not open his house for play nor allow play therein on Sundays, Christmas Day, Good Friday, and any days appointed for a public fast or thanksgiving, nor on any other days after one and before eight o'clock in the morning.

Any person, not being a licensed victualler, who shall keep a public billiard table, bagatelle board, or other instrument of the like kind, or who, being licensed under the Gaming Act, 1845, to keep such table, etc., shall fail to keep up during the continuance of his license the words "Licensed for billiards," as required by his said license, is liable to be proceeded against as the keeper of a common gaming house, and, in addition to the penalty for that offence, to a further penalty, not exceeding £10, for every day on which such billiard table, etc., is used, or to imprisonment not exceeding one month with or without hard labour.² Under § 75 of the Licensing Act, 1872, any person convicted of an offence against the tenour of a billiard license may be punished as if he were a licensed person under that Act, suffering gaming or unlawful games to be carried on upon his premises.

Closing Hours.—Any person keeping a public billiard table, whether under a victualler's license or a billiard license, who allows any person to play at such table after one or before eight o'clock in the morning, or at any time on Sundays, Christmas Day, or Good Friday, or any day appointed to be kept as a public fast or thanksgiving, is liable as if he were unlicensed. So, too, every person holding a victualler's license under the Alehouse Act, 1828, who permits play upon a public billiard table on his

¹ *Jones v. Whittaker*, L. R. 5 Q. B. 541; 39 L. J. M. C. 139; 22 L. T. 534; 34 J. P. 663; 18 W. R. 1197; 43 & 44 Vict. c. 20, § 47.

² 8 & 9 Vict. c. 109, § 11.

licensed premises at any time when such premises are not by law allowed to be open for the sale of wine, spirits, or beer, or other fermented or distilled liquors, is liable as if he kept such table without a license. This liability however, only attaches to the holder of a publican's license, and does not attach to a person licensed as a beerhouse keeper.¹

There is no exception to the above restrictions in favour of lodgers. It is, therefore, an offence for the holder of an innkeeper's license to permit lodgers on his premises to play billiards on his public billiard table after closing hours,² although such lodgers may still be supplied by him with intoxicating liquors.

Any person summarily convicted under 8 & 9 Vict. c. 109, may appeal to Quarter Sessions.³

The fees payable in respect of billiard licenses are as follows:—

	£	s.	d.
To the petty constable for serving notices ..	0	1	0
To the clerk to the justices on license ..	0	5	0

Any clerk to justices demanding more than the above fees is liable to a penalty of £5.⁴

¹ *Bent v. Lister*, 52 J. P. 389.

² *Ovendon v. Raymond*, 40 J. P. 727; 34 L. T. 698.

³ § 20.

⁴ 8 & 9 Vict. c. 109, § 10.

PART VII.

APPENDIX OF STATUTES IN
CHRONOLOGICAL ORDER.¹

THE DISORDERLY HOUSES ACT, 1751.

(25 GEO. II. c. 36.)

*An Act for the better preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses.*²

* * * * *

2. Whereas the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants and renewing their pleasures: in order, therefore, to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness which is become too general over the whole Kingdom, and is productive of much mischief and inconvenience: be it enacted by the authority aforesaid, that from and after the first day of December one thousand seven hundred and fifty-two any house, room, garden, or

Unlicensed
places of
public en-
ertain-
ment
deemed
disorderly
houses.

¹ In this Appendix headings and preambles of Acts and parts repealed are printed in italics. The titles given are in most cases those in the Short Titles Act, 1896 (59 & 60 Vict. c. 14). As to when the preamble of a statute may be referred to in construing the Act, see *Powell v. Kempton Park*, [1897] 2 Q. B. at p. 289. Side notes are not part of an Act, and have no statutory authority: see *Claydon v. Green*, L. R. 3 C. P. at p. 519.

² Of this Act, §§ 1, 9, 11, 12, and 15, were repealed by 30 & 31 Vict. c. 59; §§ 2 and 3 are repealed so far as relates to the Administrative County of Middlesex by 57 & 58 Vict. c. 15, § 2 (12); and § 3 is amended as below.

other place kept for public dancing, music, or other public entertainment of the like kind, in the Cities of London and Westminster, or within twenty miles thereof, without a license had for that purpose from the last preceding Michaelmas Quarter Sessions of the peace to be holden for the county, city, riding, liberty, or division in which such house, room, garden, or other place, is situate, (who are hereby authorised and empowered to grant such licenses as they in their discretion shall think proper), signified under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place; and every such license shall be signed and sealed by the said justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such license shall be granted at any adjourned sessions, nor shall any fee or reward be taken for any such license; and it shall and may be lawful to and for any constable or other person, being thereunto authorised by warrant under the hand and seal of one or more of His Majesty's justices of the peace of the county, city, riding, division, or liberty where such house or place shall be situate, to enter such house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law; and every person keeping such house, room, garden, or other place, without such license as aforesaid, shall forfeit the sum of one hundred pounds to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses.

Constables
may enter
and seize
all persons
found
therein.

Person
keeping
the same
to forfeit
£100.

Licensed
places to
have an in-
scription
over them

3. Provided always, and it is hereby further enacted by the authority aforesaid, that, in order to give public notice what places are licensed pursuant to this Act, there shall be affixed and kept up in some notorious place over the door or entrance of every such house, room, garden, or other place kept for any of the said purposes, and so licensed as aforesaid, an inscription in large capital letters in the words following; *videlicet*, Licensed pursuant to Act of Parliament of the Twenty-fifth of King George the Second; and that no such house, room, garden, or other place, kept for any of the said purposes, although licensed as aforesaid, shall be open for

any of the said purposes before the hour of [noon]; and that the affixing and keeping up of such inscription as aforesaid, and the said limitation or restriction in point of time, shall be inserted and made conditions of every such license; and in case of any breach of either of the said conditions such license shall be forfeited, and shall be revoked by the justices of peace in their next General or Quarter Sessions, and shall not be renewed, nor shall any new license be granted to the same person or persons, or any other person on his or their or any of their behalf, or for their use or benefit, directly or indirectly, for keeping any such house, room, garden, or other place for any of the purposes aforesaid.¹

and not be open before noon.

On breach of either of the said conditions the license to be revoked.

4. Provided always, that nothing in this Act contained shall extend or be construed to extend to the Theatres Royal in Drury Lane and Covent Garden, or the Theatre commonly called the King's Theatre, in the Haymarket, or any of them, nor to such performances and public entertainments as are or shall be lawfully exercised and carried on under or by virtue of letters patents, or license of the crown, or the license of the Lord Chamberlain of His Majesty's household, anything herein contained notwithstanding.

The theatres and other places licensed by the Crown or Lord Chamberlain excepted out of this Act.

5. And in order to encourage prosecutions against persons keeping bawdy houses, gaming houses, or other disorderly houses, be it enacted by the authority aforesaid, that if any two inhabitants of any parish or place, paying scot and bearing lot therein, do give notice in writing to any constable (or other peace officer of the like nature, where there is no constable,) of such parish or place of any person keeping a bawdy house, gaming house, or other disorderly house in such parish or place, the constable, or such officer as aforesaid so receiving such notice, shall forthwith go with such inhabitants to one of His Majesty's justices of the peace of the county, city, riding, division, or liberty in which such parish or place does lie, and shall upon such inhabitants making oath before such justice that they do believe the contents of such notice to be true, and entering into a recognisance in the penal sum of twenty pounds each to give or produce material evidence against such person for

Constable's duty upon notice given him of persons keeping a bawdy house, gaming house, or other disorderly houses, etc.

¹ The word "noon" was substituted in this section for "five in the afternoon," by 38 & 39 Vict. c. 21, § 1.

The charge of prosecution, and £10 on conviction, to each of the two inhabitants, to be paid by the overseers, on penalty of forfeiting double the sum.

such offence, enter into a recognisance in the penal sum of thirty pounds to prosecute with effect such person for such offence at the next General or Quarter Session of the peace, or at the next Assizes to be holden for the county in which such parish or place does lie, as to the said justices shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence the overseers of the poor of such parish or place shall forthwith pay the sum of ten pounds to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand, the said sums of ten pounds and ten pounds, such overseers, and each of them, shall forfeit to the person entitled to the same, double the sum so refused or neglected to be paid.

Persons keeping such bawdy house, etc., to be bound over to appear to answer the indictment.

6. Provided always, and be it enacted by the authority aforesaid, that upon such constable or other officer entering into such recognisance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant to bring the person so accused of keeping a bawdy house, gaming house, or other disorderly house before him, and shall bind him or her over to appear at such General or Quarter Sessions or Assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the meantime, and until such indictment shall be found, heard, and determined, or be returned by the grand jury, not to be a true bill.

Constable neglecting his duty forfeits £20.

7. Provided also, that in case such constable shall neglect or refuse, upon such notice, to go before any justice of the peace, or to enter into such recognisance, or shall be wilfully negligent in carrying on the said prosecution, he

shall for every such offence forfeit the sum of twenty pounds to each of such inhabitants so giving notice as aforesaid.

8. And whereas by reason of the many subtle and crafty contrivances of persons keeping bawdy houses, gaming houses, or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment: be it enacted by the authority aforesaid, that any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any bawdy house, gaming house, or other disorderly house, shall be deemed and taken to be the keeper thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof.

Who shall be deemed the keeper of such bawdy house, etc.

* * * *

10. And be it further enacted by the authority aforesaid, that no indictment which shall at any time after the said first day of *June* be preferred against any person for keeping a bawdy house, gaming house, or other disorderly house, shall be removed by any writ of certiorari into any other court, but such indictment shall be heard, tried, and finally determined at the same General or Quarter Session or Assizes where such indictment shall have been preferred (unless the Court shall think proper, upon cause shewn, to adjourn the same), any such writ or allowance thereof notwithstanding.

Indictment not removable by certiorari into any other court.

* * * *

13. And be it further enacted by the authority aforesaid, that any person entitled to any of the forfeitures by this Act imposed may sue for the same by action of debt in any of his Majesty's Courts of Record at Westminster, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of being forfeited by an Act, intituled An Act for the better preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses; and the plaintiff, if he recover in any such Action, shall have his full costs.

Recovery of forfeitures.

Full costs.

Limitation
of actions.

14. Provided, that no action shall be brought by virtue of this Act unless the same shall be commenced within the space of six calendar months after the offence committed.

THE EXCISE LICENSES ACT, 1825.

(6 GEO. IV., c. 81.)

An Act to repeal several Duties payable on Excise Licenses in Great Britain and Ireland, and to impose other Duties in lieu thereof; and to amend the Laws for granting Excise Licenses.

[27th June, 1825.]

1. Duties on excise licenses to cease.¹

Instead of
duties re-
pealed the
following
shall be
levied.

2. There shall be raised, levied, collected, and paid unto his Majesty, his heirs and successors, in and throughout the United Kingdom of Great Britain and Ireland, the several duties of excise, or rates and sums of money hereinafter following; (that is to say),

New
duties.

For and upon every excise license to be taken out by any maker, manufacturer, trader, dealer, retailer, or person hereinafter mentioned, within Great Britain and Ireland, to be paid by such maker, manufacturer, trader, dealer, retailer, and person respectively, the respective annual sum or duty of excise in British currency hereinafter mentioned; (that is to say),

*	*	*	*	*	*
*	*	*	*	*	*

New duties
to be under
the man-
agement of
the Com-
missioners
of Excise.

And for the better securing, raising, levying, and collecting of the said duties hereby granted, the same shall be under the collection and management of the Commissioners of Excise for the time being; and all the moneys therefrom arising shall (the necessary charges of raising and accounting for the same being deducted therefrom) be paid into the receipt of his Majesty's exchequer, and carried to and made

¹ Repealed 36 & 37 Vict. c. 91.

part of the consolidated fund of the United Kingdom of Great Britain and Ireland.¹

5. And whereas the duty upon certain licenses authorised and required to be taken out by this Act, is imposed at and according to the rent at which the premises used for the purpose or purposes mentioned in such license are rated to the duty on inhabited houses: And whereas many houses or premises in different parts of the United Kingdom, for or in respect of which such licenses may be required, may not be so rated: Be it therefore enacted, that in all cases, and in any part of the United Kingdom in which any such house or premises shall not be so rated as aforesaid, it shall and may be lawful, in order to ascertain the rent or annual value of such house or premises, for the person or persons, being the tenant or occupier thereof, who shall apply for any such license, upon which the duty is so imposed as aforesaid, to produce to the person or persons authorised to grant such license as aforesaid, a certificate signed by himself and the owner or landlord of the said house and premises, stating the true rent paid by or for which such house or premises is or are let to such tenant or occupier; or if the true rent, by reason of the payment of any premium, or performance of any condition or otherwise, shall not be reserved and payable to the owner or landlord by the tenant or occupier of such house or premises, then and in such case, stating the estimated rent, or true annual value of such house or premises, and the rate of duty payable by such tenant or occupier for such license, shall be paid, taken and received, according to the rent or value so certified: Provided always, that if the person or persons authorised to grant such license shall be dissatisfied with the rent or value so certified, he or they shall and is and are hereby authorised and required to adopt such other means as the Commissioners of Excise shall think fit, and shall from time to time direct, to ascertain the true rent or annual value of such house or premises; and that thereupon the rate of duty payable for and upon such

Where the house and premises shall not be rated, the rent or annual value is to be certified by the tenant and landlord, and if such certificate be unsatisfactory, the Commissioners of Excise shall adopt other means for ascertaining the true rent or value thereof, which shall be conclusive.

¹ The duties imposed by this Act upon retailers of intoxicating liquors (although not all expressly repealed) seem to have little practical importance, as 43 & 44 Vict. c. 20 (see *post*), has apparently impliedly repealed them; they are therefore omitted here: §§ 3 and 4 relating to Ireland are also omitted.

license shall be paid, taken, and received, according to the rent or annual value of the house and premises so ascertained as last aforesaid; anything herein or in any other Act or Acts of Parliament to the contrary thereof notwithstanding.

Licenses to be granted within the limits of the chief office of excise in London, by the Commissioners of Excise, or such person as they may employ for that purpose, and within the limits of the cities of Edinburgh and Dublin respectively, by the commissioners or assistant commissioners there, or such persons as they may employ for that purpose, and elsewhere by the collectors and supervisors of the respective excise collections, on payment of the duties.

6. Every excise license which is authorised or required to be taken out by this Act shall be granted, and the duty thereupon imposed shall be paid in and throughout the United Kingdom in manner and form following; that is to say, if any such license shall be taken out within the limits of the head or chief office of excise in London, then such license shall be granted under the hands and seals of two or more of his Majesty's Commissioners of Excise, or of such person or persons as such commissioners shall from time to time employ for that purpose, and the duty thereupon imposed as aforesaid shall be paid at such head or chief office at the time of granting the license; or if such license shall be taken out within the limits of the cities of Edinburgh or of Dublin respectively, such license shall be granted under the hands and seals of his Majesty's Commissioner or Commissioners and Assistant Commissioners of Excise acting in and for Scotland or Ireland respectively, for the time being, or of any two of them respectively, or of such person or persons as such commissioner or commissioners and assistant commissioners shall from time to time employ for that purpose, and the duty thereupon imposed shall be paid at the chief office of excise in Edinburgh or Dublin respectively, at the time of granting the license; or if such license shall be taken out in any other part of the United Kingdom without such respective limits as in that behalf respectively aforesaid, then and in every such case the same shall be granted under the hands and seals of the collector, or other person having charge of the collection, and supervisor of excise within the collection and district in which such license is taken out, and the duty thereupon imposed shall be paid to such collector or other person as aforesaid at the time of granting the license; and such respective Commissioners of Excise in England, and Commissioner or Commissioners and Assistant Commissioners of Excise acting in and for Scotland and Ireland respectively, and the person or persons by them respectively employed as aforesaid, and

every collector or other person having charge of the collection, and supervisor as aforesaid, is and are hereby respectively authorised and required to grant and deliver every such license to the person or persons who shall apply for and be legally entitled to receive the same, forthwith upon payment of the duty or sum of money thereupon imposed, free from all poundage, fee, gratuity, or any other payment whatsoever.

7. In every license to be taken out under or by authority of this Act shall be contained and set forth the purpose, trade, or business for which such license is granted, and the true name and place of abode of the person or persons taking out the same, and the true date or time of granting such license, and . . . the place at which the trade or business for which such license is granted shall be carried on: Provided always, that persons in partnership, and carrying on their trade or business in one place and set of premises only, shall not be obliged to take out more than one license in any one year, for the purpose of carrying on such trade or business.

Contents
of license.

Partners
need not
take out
more than
one license.

8. *Regulations as to auctioneers selling by auction certain goods.*¹

9. Where by any Act or Acts of Parliament relating to excise licenses, it is required that any person or persons taking out an excise license to exercise or carry on any trade or business therein mentioned in any part of the United Kingdom should give bond at the time of granting such license, it shall and may be lawful for such person or persons . . . to take out such license without giving bond as aforesaid. . . .²

No person
or persons
taking out
license
shall give
bond.

10. No one license taken out under or by authority of this Act, by any person or persons, except auctioneers and maltsters, shall authorise or empower such person or persons to exercise or carry on the trade or business mentioned in such license in more than one separate and distinct set of premises, such premises being all adjoining or contiguous to each other, and situate in one place, and held together for the same trade or

No one
license to
authorise
any person,
except auc-
tioneers,
and malt-
sters, sub-
ject to the
lowest rate

¹ Repealed 8 & 9 Vict. c. 15, §§ 1 and 6.

² Part of this section was repealed by 36 & 37 Vict. c. 91.

of duty, to carry on his trade in more than one separate and distinct set of premises. business, and of which he, she, or they shall have made lawful entry, to exercise or carry on therein his, her, or their trade or business as aforesaid, at the time of granting such license; but a separate and distinct license shall be taken out by all and every such person or persons as aforesaid, except as aforesaid, to exercise or carry on his, her, or their trade or business as aforesaid, at or in any other or different premises than as before mentioned. . . .¹

This Act not to prevent persons licensed to sell beer, cider, or perry, to be consumed on the premises, or retailers of spirits, wine, or sweets, from selling at fairs or races. Removal of license in case of destruction of premises by fire or accident. Publicans' licenses not to be removed

11. Provided always, that nothing herein contained shall extend to prohibit any person or persons duly licensed to sell beer, cider, or perry, by retail, to be drank or consumed in his, her, or their house or premises, or any retailer of spirits (not being a retailer of spirits in Ireland licensed as a grocer to trade in, vend, and sell coffee, tea, cocoanuts, chocolate, or pepper), or any retailer of foreign wine, or retailer of sweets or made wines, or of mead, or of metheglin, he or she being duly licensed respectively for such respective purpose, to carry on his or her trade or business, for which he or she respectively shall be so licensed as aforesaid, in booths, tents, or other places, at the time and place and within the limits of holding any lawful and accustomed fair, by virtue of any law or statute in that behalf, or any public races; provided also that in all cases in which the house or premises in respect of which any excise license is or shall be granted shall be burnt down, or otherwise destroyed, or rendered uninhabitable by fire or other unavoidable cause or accident, it shall and may be lawful for the Commissioners and Assistant Commissioners of Excise, or collector and supervisor, or other person or persons authorised to grant licenses within the district or place in which such house or premises was or were situate, upon due notice thereof to him or them in that behalf given, to authorise and empower, by indorsement on such license, or otherwise, as the Commissioners of Excise shall direct, the person or persons authorised to carry on trade or business by such license at the house or premises so burnt down or otherwise destroyed or rendered uninhabitable, to carry on such trade or business at any other and different house or premises in the same district or place,

¹ Part of this section not relevant to the retailing of intoxicating liquors is omitted.

of which due entry shall be thereupon made by such person or persons at the time of such removal thereto; provided always, that where such licensed person or persons as aforesaid shall be a person or persons by law required to be duly authorised by justices of the peace to keep a common inn, alehouse, or victualling house, it shall not be lawful for the Commissioners or Assistant Commissioners of Excise, or such collector and supervisor, or other person or persons authorised to grant licenses as aforesaid, to authorise or empower such licensed person or persons as aforesaid, unless such person or persons shall, besides giving such notice as hereinbefore required, produce to such collector and supervisor, or other person or persons authorised to grant licenses as aforesaid, such authority from justices of the peace, as by law required in that behalf, to keep a common inn, alehouse, or victualling house, in the house or premises to which such person or persons shall desire to remove, in consequence of such fire or other unavoidable cause or accident as aforesaid.¹

12. Sale of goods in import warehouses.

13. No excise license shall be granted under or by authority of this Act, for the sale of any beer, or cider or perry, by retail, to be drank or consumed upon the house or premises of the person or persons applying for such license, to any person or persons who shall not produce at the time of applying for such license a certificate or authority then in force, to him, her, or them in that behalf granted in due form of law by justices of the peace or magistrates, or other competent persons, for such person or persons applying for such licenses as aforesaid to keep a common inn, alehouse, or victualling house; and if any such license shall be granted to any person or persons other than as aforesaid, the same shall be and is hereby declared to be absolutely null and void to all intents and purposes, and the person or persons taking out the same shall be subject to all penalty or penalties to which he, she, or they would have been subject had no such license been granted.

No license to be granted for selling beer or cider by retail, to be drank on the premises, without a justices' license.

14. No license for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, to

No license to retail spirits, or

¹ An occasional license is now required for sales at fairs, etc.: see L. A. 1874, § 18.

sweets or made wines, or mead or metheglin, to be consumed on the premises, shall be granted to any person who has not a retail beer license.

be drank or consumed in or upon the house or premises where sold, shall be granted to any person or persons who shall not have and produce a license for the sale of beer, cider or perry, by retail, to be drank or consumed in or upon such house or premises, in that behalf granted as herein by this Act before mentioned; and if any license for the sale of any spirits or *foreign wine*, or sweets or made wines, or mead or metheglin, by retail, to be drank or consumed in or upon the house or premises where sold, shall be granted to any person or persons other than as aforesaid, such license shall be and is hereby declared to be absolutely null and void to all intents and purposes; and all and every such person or persons as aforesaid shall be subject and liable to all and every penalty and penalties imposed upon persons selling spirits or *foreign wines*, or sweets or made wines, or mead or metheglin, by retail without license.¹

Aqua vitæ in Scotland to be deemed spirits, and to be sold only by persons having licenses to retail beer and spirits.

15. The spirits called aqua vitæ in Scotland shall be deemed and taken to be British spirits to all intents and purposes, and all persons retailing such spirits in Scotland or elsewhere shall first take out a license to retail beer, and also a license to retail spirits, as before directed by this Act, and shall in all respects be subject to all the same rules, regulations, and restrictions to which such retailers of spirits are subject or liable; anything in this or any other Act contained to the contrary thereof notwithstanding.

Licenses taken out by brewers and distillers, and by publicans, as retailers of beer, spirits, or foreign wine, or sweets or madewines, or mead, or metheglin, shall ex-

16. All excise licenses taken out in the United Kingdom by any brewer or brewers of beer or by any distiller or maker, distillers or makers, of low wines or spirits, or by any person or persons who shall be duly authorised by justices of the peace to keep a common inn, alehouse, or victualling house, and who shall take out a license for selling beer, cider, or perry, by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, under or by virtue of this Act, or any other law or laws of excise, shall continue and be in force from the day of the date of such licenses respectively, until the 10th day of

¹ Repealed as to licenses for retailing foreign wine: 39 & 40 Vict. c. 16, § 4.

October following, on which day in each year all such excise licenses (except as aforesaid) shall expire; and all other excise licenses throughout the United Kingdom, except those above specified, shall continue and be in force from the day of the date of such licenses respectively, until the 5th day of July following, on which day in each year all such licenses as last aforesaid shall expire; and all and every person or persons who shall have taken out any such license as aforesaid, and who shall wish or intend to continue the trade or business for which such license was granted for any longer space of time, shall take out a fresh license for the year following, to expire on one of such days as hereinbefore mentioned, according to the nature of the license by him, her, or them taken out, and shall so renew the same from year to year, so long as he, she, or they shall continue such trade or business, and shall pay in each and every such case the duty thereupon imposed at such time and place as hereinbefore mentioned; and every such person or persons shall in every such case as aforesaid give notice in writing at least twenty-one days before the expiration of the current license to him, her, or them before granted, of such his, her, or their intention to continue the trade or business for which such license was before granted to the collector or supervisor, or other person or persons authorised to grant licenses for the district or place at which such trade or business shall be carried on; and in cases where the excise license is so renewed as aforesaid, and such notice as aforesaid shall have been given, the new license shall bear date from the day or date of the expiration of the current licenses before granted; but in case where such notice shall not have been given as aforesaid, and in all other cases than as aforesaid, the license shall bear date from the day of the date of the application made for such license, although and notwithstanding any such license may be delivered at any day subsequent to the date of such application.

pire on the 10th of October in each year, and all other licenses on the 5th day of July; licenses to be renewed yearly, and notice for renewal given by the trader twenty-one days at least before the expiration of his current license; new license, if regularly renewed, to bear date from expiration of the former license when regularly renewed, and when afterwards or otherwise granted, from the date of the application.

17. If any person or persons shall commence or begin to exercise or carry on any trade or business, for the exercise or carrying on of which an excise license is required, such person or persons not having before taken out any such license, it shall and may be lawful for the person and persons

Licenses may be granted to new beginners for a part of the year, on

payment of authorised to grant licenses, to grant such license for the
proportional part remainder of the current year in which such license shall be
of the duty, taken out, ending on the 5th day of July or on the 10th day
according to the of October next following the date of the license taken out
to the by such person or persons, according to the nature of such
quarter of license, upon payment of such proportional part of the duty
the year in thereupon imposed, in such manner as hereinafter mentioned ;
which the that is to say, if such license shall be taken out at any time
license shall be within the first quarter of the current year in which such
taken out, within the first quarter of the current year in which such
license shall be taken out, and ending as aforesaid, or in the
quarter expiring on the 10th day of October, or on the 5th
day of January, next following the date of such license,
according to the nature of the license taken out, that then
the person or persons taking out such license shall pay the
whole duty imposed upon such license, in such manner as
hereinbefore mentioned at the time of granting such license ;
and if such license shall be taken out at any time within the
second quarter of such current year, and ending as aforesaid,
or in the quarter expiring on the 5th day of January, or on
the 5th day of April, next following the date of such license,
according to the nature of the license taken out, the person
or persons taking out such license shall pay three-fourth
parts of the duty imposed upon such license, in such manner
as hereinbefore mentioned at the time of granting such
license ; and if such license shall be taken out at any time
within the third quarter of such current year, and ending as
aforesaid, or in the quarter expiring on the 5th day of April,
or on the 5th day of July, next following the date of such
license, according to the nature of the license taken out, one-
half of the duty imposed upon such license shall be paid in
such manner as hereinbefore mentioned at the time of
granting such license ; and finally, if such license shall be
taken out at any time within the last quarter of such current
year, and ending as aforesaid, or in the quarter expiring on
the 5th day of July, or on the 10th day of October, next
following the date of such license, according to the nature of
the license taken out, that then a fourth part only of the
duty imposed upon such license shall be paid in such manner
as hereinbefore mentioned at the time of granting such
license.

18. No person or persons who shall at any time have taken out an excise license for the exercise or carrying on of any trade or business for which an excise license is required, and who shall in any subsequent year after such license shall have expired take out a new license for the carrying on the same trade or business, whether on the same or on other or different premises from those on which he, she, or they before carried on such trade or business, shall be deemed or taken to be a person or persons commencing or beginning to exercise or carry on such trade or business, within the intent and meaning of this Act, so as to entitle him, her, or them to take out such license, upon payment of a proportional part only of the duty thereupon imposed; but all and every such person or persons as aforesaid shall pay the whole of such duty, unless the period of time between the expiration of the former license and the taking out of the new license shall at the least be a period of two years.

Persons who have been licensed before shall not on taking out a new license be considered beginners, unless the old license expired at least two years before the new license is taken out.

19 & 20. *Regulations as to the renewal of licenses taken out under former Acts.*¹

21. Upon the death of any person or persons licensed under or by virtue of this Act, or any law or laws of excise, or upon the removal of any such person or persons from the house or premises at which he, she, or they were authorised by such license to exercise or carry on the trade or business mentioned in such license, it shall and may be lawful for the person and persons authorised to grant licenses, to authorise and empower, by endorsement on such license, or otherwise, as the Commissioners of Excise shall direct, the executors or administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing as aforesaid, who shall be possessed of and occupy the house or premises before used for such purpose as aforesaid, in like manner to exercise or carry on the same trade or business mentioned in such license, in or upon the same house or premises at which such person or persons as aforesaid deceased or removing as before mentioned, by virtue of such license to him, her, or them in that behalf granted, before exercised or carried on such trade or business for and during

Licenses may be transferred to the executors, wife, child, or assignee of the person licensed.

¹ Both repealed, 36 & 37 Vict. c. 91.

Fresh
entries of
premises
to be made.

Transfer of
publicans'
retail beer
license to
be made
only on
justices'
certificate.

the residue of the term for which such license was originally granted, without taking out any fresh license or payment of any additional duty, or any fee thereupon for the residue of such term and until expiration thereof: Provided always, that a fresh entry of the premises at which such trade or business shall continue to be so exercised or carried on as aforesaid, shall thereupon be made by and in the name or names of the person or persons to whom such authority as aforesaid shall be granted; and provided also, that no such authority as aforesaid shall be granted for the sale of beer, cider, or perry, or sweets, or made wines or sweets, mead or metheglin by retail, to be drunk or consumed in or upon the house or premises for which the original license was granted, except and in such cases where a proper certificate granted and given by a justice of the peace or magistrate, or other competent person according to the law, made after the death or removal of the former occupier or occupiers of the premises shall have taken place, shall be produced, approving of the person or persons to whom such certificate shall be given or granted as aforesaid.

Persons dis-
abled by
conviction
from keep-
ing a com-
mon inn,
etc., dis-
abled from
having
excise
license to
retail beer.

22. All and every person or persons who shall be disabled by any conviction from holding or having a license to keep, or from keeping a common inn, alehouse, or victualling house, shall also by such conviction be disabled from taking out and from having any excise license to sell, and from selling beer, cider, or perry by retail in any manner whatsoever, under any excise license or licenses obtained for such purpose; and if any such person shall, after such conviction as aforesaid, take out or have any excise license or licenses for any such purpose as aforesaid, the same shall and is hereby declared to be absolutely null and void to all intents and purposes; and every person who shall, after such conviction as aforesaid, sell any beer, cider, or perry by retail in any manner whatsoever, shall incur the penalty for so doing without license; and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace or person acting as such, of any such conviction as aforesaid shall on the trial in such prosecution be legal evidence thereof, which certificate such clerk of the peace or other person acting as such, is hereby authorised

On prose-
cution, cer-
tificate
from clerk
of the peace
of convic-
tion shall
be evi-
dence.

and required, within one week after any such conviction shall have been returned to his office, to deliver to the collector of excise, or other person or persons authorised to grant excise licenses within the district or place in which such conviction shall have taken place, setting forth a copy of such conviction signed by himself, for which he shall demand or receive no fee or reward whatsoever; and if any such clerk of the peace or other person acting as such as aforesaid, shall neglect or omit to deliver such certificate as aforesaid, he shall for every such offence forfeit the sum of ten pounds.

Penalty on clerk of the peace neglecting to give certificate.

23. Where the license for the sale of beer, cider, or perry by retail, to be drank or consumed upon the house or premises of the person or persons to whom the same is granted shall become void, and the person or persons thereupon disabled in such manner as before mentioned by this Act, the license for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin by retail, to be drank or consumed upon the house or premises thereupon granted, shall become null and void also, to all intents and purposes; and in such case if the person or persons to whom the same respectively were granted shall sell any spirits or any foreign wine, or any sweets or made wines, or any mead or metheglin respectively by retail, to be drank or consumed upon the house or premises, after such conviction as aforesaid shall have taken place in manner before mentioned in this Act, and every such license as aforesaid has thereby become void, such person or persons shall incur the penalty for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, to be consumed upon the premises by retail without license; and in all such cases, in the prosecution for the recovery of such penalty as aforesaid, such conviction shall be proved in such and the like manner as before specified by this Act in a prosecution under similar circumstances for the sale of beer, cider, or perry by retail, to be drank or consumed on the house or premises without license.

Where the retail beer license shall become void by conviction as aforesaid, the retail spirit license shall become void also.

24. And whereas the periods at which justices of the peace or magistrates, or other competent persons as aforesaid, are in the practice of granting such certificates or authorities as aforesaid, to persons to keep common inns, alehouses, or

Upon the expiration of the magistrate's authority to keep a public house within the year, before the expiration of the excise licenses granted thereupon (no conviction having taken place) a proportional part of the duties on the excise licenses shall be returned.

victualling houses, are various, and at different times in different parts of the United Kingdom: And whereas the same do not in any manner correspond with the period at which excise licenses are granted, or for which the same continue in force; and that upon the expiration of such certificate or authority as aforesaid, the excise license to sell beer, cider, or perry by retail, to be drank or consumed upon the house or premises where sold, granted upon such certificate or authority as aforesaid expires, and the excise licenses to sell spirits, foreign wines, sweets or made wines, and mead or metheglin by retail, to be drank or consumed upon the house or premises which are granted upon such retail beer excise license do thereupon also expire; be it therefore enacted, that if the term for which any such certificate or authority as aforesaid is granted shall expire (no conviction as before mentioned having taken place) at any time within the first quarter of the current year for which such excise licenses as aforesaid respectively were granted, and no such certificate or authority shall be renewed or granted for the succeeding year, three-fourth parts of the duties thereupon respectively paid by the person or persons to whom the same respectively were granted, shall be returned to the person or persons then holding such licenses, and carrying on trade or business in such house or premises; and if such certificate or authority as aforesaid shall expire as aforesaid, at any time within the second quarter of the current year for which such licenses as aforesaid respectively were granted, and shall not be renewed or granted for the succeeding year, one-half part of the duties paid thereon respectively shall be returned as aforesaid; and if such certificate or authority shall so expire as aforesaid, at any time within the third quarter of the current year for which such licenses as aforesaid respectively were granted, and shall not be renewed or granted as aforesaid, then one-fourth part of the duties paid thereon respectively shall be returned as aforesaid; and the collector or other person or persons to whom the duty or duties payable on such licenses respectively was or were paid at the time of granting the same, shall and are hereby respectively authorised and required to return such sum or sums of money as aforesaid to such person or persons as aforesaid, on application to him

or them being thereupon made by such person or persons for that purpose.

25. All and every person or persons in the United Kingdom, required by any law or laws of excise to make entry of his, her, or their premises, in order to exercise or carry on therein any trade or business, for which an excise license is required, and who shall have taken out such license, shall paint or cause to be painted, or shall place and fix in letters publicly visible and legible, and at least one inch long, in and upon his, her, or their entered premises, his, her, or their names respectively, at full length (or where there are partners or more than one person engaged in carrying on jointly the same trade or business, the name or style of the firm or partnership), and after such name or names, the word "licensed," adding thereto the words necessary to express the purpose, or trade or business for which such license has been granted; and such person or persons shall cause such letters to be painted or placed, and fixed in some conspicuous place on the outside of the front of his, her, or their said premises, over the principal outward door or gate, or entrance door thereto, and not more than three feet from the top of such outward door or gate, or entrance door; and if any such person or persons as aforesaid shall not paint or place and fix such letters as aforesaid, or shall not preserve and keep the same so painted, placed, and fixed, or shall not repaint or renew the same as often as necessity shall require, for the purpose of keeping the same in good order and condition during the continuance of his, her, or their license, he, she, or they shall forfeit for every such offence the sum of twenty pounds; and if any person or persons not being licensed to exercise or carry on any trade or business for which a license is required by this Act, shall put or have any such letters as aforesaid upon his, her, or their premises, or any letters importing that he, she, or they does or do exercise or carry on any such trade or business, or is or are licensed so to do, all and every such person or persons shall for every such offence forfeit the sum of twenty pounds.

Parties
licensed
required to
enter their
premises
for carry-
ing on
business for
which a
license is
required, to
put up over
their pre-
mises their
name, etc.

Penalty for
not so
doing, or
on unli-
censed per-
sons for so
doing, £20.

26. If any person or persons shall make or manufacture, deal in, retail, or sell any goods or commodities hereinafter

Penalty for
exercising
trade, etc.,

without
license.

mentioned, or shall exercise or carry on any trade or business hereinafter mentioned, for the making or manufacturing, or dealing in, retailing, or selling of which goods or commodities, or for the exercising or carrying on of which trade or business a license is required by this Act, without taking out such license as is in that behalf required, he, she, or they shall for every such offence respectively forfeit and lose the respective penalty thereupon imposed, as hereinafter follows; (that is to say), . . .

* * * * *

Every person who shall sell beer, cider, or perry by retail, to be drank or consumed in his, her, or their house or premises;—Every retailer of spirits, not being a retailer of spirits in Ireland, duly licensed to sell coffee, tea, cocoanuts, chocolate, or pepper;—Every retailer of foreign wine;—Every retailer of sweets or made wines, or of mead or metheglin;— . . . Every dealer in or seller of tobacco or snuff;— . . . shall respectively forfeit and lose the sum of fifty pounds.¹

The occupiers of premises where goods are retailed without license by persons unknown, shall be deemed to be the retailers thereof, if privy or consenting thereto, and shall be liable to penalties for sale without license.

27. If any spirits shall be sold or delivered in any quantity less than two gallons, or if any beer, wine, cider, perry, sweets, mead, or metheglin, or vinegar, or any other goods for the retail of which a license is by this Act required, shall be sold by retail in any house or premises, or in any part of any house or premises, by any person or persons unknown, or who shall not be licensed for that purpose according to this Act, the occupier of such house or premises, or part of any house or premises, where such spirits or other liquors or goods shall be so sold as aforesaid, if but one occupier only, and if more than one, then the several occupiers thereof, being privy or consenting thereto, shall be deemed and taken to be the retailer or retailers of such spirits, or other liquors or goods, and as such, shall be subject and liable to the penalties imposed upon persons for the sale of spirits, or such other liquors or goods, by retail, without license.

Penalty on
licensed
persons not

28. If any person or persons licensed to exercise or carry on any trade or business, or make or sell any goods for

¹ The portions of this section referring only to wholesale dealers are omitted. Parts are repealed by 36 & 37 Vict. c. 91, and 43 & 44 Vict. c. 20, § 49.

which an excise license is required, shall not produce and deliver such license to be read and examined by any officer or officers of excise, within a reasonable time after such officer or officers shall demand the production thereof, such person or persons shall for each and every such offence forfeit the sum of twenty pounds.

29. Where any person or persons shall be lawfully convicted of any offence in carrying on any trade or business, or making or selling any goods without license, for the carrying on of which trade or business, or the making or selling of which goods a license or licenses is or are required by this Act, and the pecuniary penalty imposed for such offence shall not be paid and cannot be levied, it shall and may be lawful for the Commissioners of Excise to cause such reward as they shall think fit, not exceeding ten pounds in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any monies in their hands arising by any penalties or forfeitures incurred under the laws of excise.

producing their license on demand of officer, £20.
Informer against an unlicensed trader, if the penalty cannot be recovered, to be paid such sum as the commissioners shall direct, not exceeding £10.

30. Nothing in this Act contained to prejudice the Universities, the Vintners' Companies, or the Borough of St. Albans.¹

THE PASSAGE VESSEL LICENSES ACT, 1828.

(9 GEO. IV., c. 47.)

An Act for regulating the retail of exciseable Articles and Commodities to Passengers on board of Passage Vessels from one Part to another of the United Kingdom. [15th July, 1828.]

Whereas many packets, boats, and other vessels are employed for the carriage and conveyance of passengers from one part of the United Kingdom to another part thereof, and it would greatly tend to the convenience and accommodation of such passengers, if the master or commander or other person of or belonging to such

¹ Of the remaining sections of this Act, §§ 31, 33, 34, 36 and 37, are repealed by 36 & 37 Vict. c. 91; § 32 by 57 & 58 Vict. c. 56; § 35 by 51 & 52 Vict. c. 33, & 8.

Com-
mander,
etc., of
vessels and
packets
carrying
passengers
from one
part of the
United
Kingdom to
another,
may be
licensed by
the Com-
missioners
of Excise
to retail
wine, beer,
tobacco,
etc., on
board such
vessels.

Licenses to
be trans-
ferable;

vessels were by law authorised to provide for and to retail and sell to such passengers foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco, to be consumed by such passengers in and on board of such vessels during the voyage : Be it therefore enacted, etc., it shall be lawful for the Commissioners of Excise in England, and for the Commissioner or Commissioners and Assistant Commissioners of Excise in Scotland and Ireland respectively, at any time to grant a license to any master or commander of any packet, boat, or other vessel employed for the carriage and conveyance of passengers from one part of the United Kingdom to another or other parts thereof, or to any other person belonging to any such packet, boat, or vessel, who shall be nominated and approved of by the owner or owners, or director or directors thereof, residing in England, Scotland, or Ireland respectively, such nomination and approval being signified by their writing and subscribing a certificate or declaration, to be delivered by them to the Commissioners or Assistant Commissioners of Excise of that part of the United Kingdom in which the owner or owners, director or directors, reside, or to such person as such commissioners in England, or such commissioner or commissioners and assistant commissioners in Scotland and Ireland respectively, shall respectively appoint for that purpose, to provide for and to supply, retail, and sell to the passengers on board such vessel, to be consumed by them in and on board thereof during the voyage on which such passengers shall be then carried and conveyed, foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco; and such license shall continue in force until the 5th day of July next ensuing the date thereof; and such license shall be transferable, by an indorsement thereon of such transfer, subscribed by the person to whom and in whose name the same shall have been granted, his executors or administrators, or by any assignee thereof, his executors or administrators, to any other master or commander or any other person of or belonging to the said vessel, or in case of the loss or breaking up of any such vessel before the expiration of any such license, to the master, commander, or any other person of or belonging to any other vessel of the same owner or owners or company or companies, substituted in lieu of the said vessel in respect of which such license was granted, and

nominated and approved of by the owner or owners of such vessels, or the director or directors of such company or companies, such nomination, approval, and transfer being signified by the subscription of such owner or owners as aforesaid, or their executors, administrators, or assigns, or of such director or directors, to such indorsement; and every such license shall from year to year be renewed before the expiration of the license granted for the preceding year, and shall fully authorise and empower the person therein named, or his assignee, to supply, retail, and sell foreign wine, beer, cider, perry, spirituous liquors, and tobacco, or any of them, to be consumed in and on board of such vessel by the passengers thereof, during any voyage on which such passengers shall be carried and conveyed while such license shall continue in force; any thing in any Act or Acts in force immediately before the passing of this Act to the contrary notwithstanding.¹

and to be
renewed
yearly.

2. At the time of granting such license as aforesaid the owner or owners, or director or directors of such packet, boat, or other vessel in respect of which such license is applied for as aforesaid, shall pay or cause to be paid to the Commissioners of Excise in England, or Commissioner or Commissioners and Assistant Commissioners of Excise in Scotland or Ireland, to whom such application shall be made, according to the residence of such owner or owners, or director or directors as aforesaid, or to the collector of excise or other person appointed as aforesaid to grant the same, a duty of one pound.

Duty on
license.

3. If any person shall Retail or sell, on board any packet, boat, or other vessel employed for the carriage or conveyance of passengers from one part of the United Kingdom to another part thereof, any foreign wine, strong beer, cider, perry, spirituous liquors, or tobacco, without having taken out such license as is by this Act required, every such person shall for every such offence incur and be liable to a penalty of ten pounds.

Penalty for
selling
wines, etc.,
without a
license,
£10.

¹ The preamble of this Act is repealed by 53 & 54 Viet. c. 33. Under this section the Commissioners of Excise only could grant these licenses; by 4 & 5 Wm. IV. c. 75, § 10, they were empowered to authorise officers to do so: see *post*.

4. The duties by this Act imposed shall be under the management of the Commissioners of Excise.¹

5. Moneys arising from duties to be carried to the consolidated fund.

6. Nothing in this Act to affect any regulations or penalties respecting smuggling.

7. *Act may be amended.*²

THE ALEHOUSE ACT, 1828.

(9 GEO. IV. c. 61.)

An Act to regulate the Granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England.

[15th July, 1828.]

Whereas it is expedient to reduce into one Act the law relating to the licensing by justices of the peace of persons keeping or being about to keep inns, alehouses, and victualling houses, to sell excisable liquors by retail, to be drunk or consumed on the premises, in that part of the United Kingdom called England: Be it therefore enacted, etc. In every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county, not being within any such division, and in every liberty, division of every liberty, county of a city, county of a town, city, and town corporate, in that part of the United Kingdom called England, there shall be annually holden a special session of the justices of the peace (to be called the general annual licensing meeting), for the purpose of granting licenses to persons keeping or being about to keep inns, alehouses, and victualling houses, to sell excisable liquors by retail, to be drunk or consumed on the premises therein specified; and such meetings shall be holden in the counties of Middlesex and Surrey within the first ten days of the month of March, and in every other county on

General
licensing
meetings to
be held
annually.

Time of
holding
such meet-
ings.

¹ The purport only of this and the following sections is stated.

² Repealed 36 & 37 Vict. c. 91.

some day between the 20th day of August and the 14th day of September inclusive; and it shall be lawful for the justices acting in and for such county or place assembled at such meeting, or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licenses, for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper.¹

2. . . . In every division or place as aforesaid there shall be holden, twenty-one days at the least before each such general annual licensing meeting, a petty session of the justices acting for such county or place, the majority of whom then present shall, by a precept under their hands, appoint the day, hour, and place upon and in which such general annual licensing meeting for such division or place shall be holden; and shall direct such precept to the high constable of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order the several petty constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel, on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a license to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice.²

Time and place how to be appointed.

Notice of meetings to be given.

3. . . . It shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment, to such

Adjournment of meetings.

¹ Preamble repealed 53 & 54 Vict. c. 33. As to the application of this Act to the granting of certificates under the Wine and Beerhouse Acts, see *post*, 32 & 33 Vict. c. 27, § 8; and 33 & 34 Vict. c. 29, § 4.

² Introductory words in this and the following sections repealed by 51 & 52 Vict. c. 57. As to high constable and notices, see *post*, 7 & 8 Vict. c. 33, and 32 & 33 Vict. c. 47.

day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license: Provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of March in the counties of Middlesex and Surrey, and of August or September in every other county.

Special sessions for transferring licenses to be appointed.

4. . . . The justices assembled . . . at the general annual licensing meeting in every . . . year, shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden, in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant; at which special session it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time hereinafter directed, to license such persons intending to keep inns theretofore kept by other persons being about to remove from such inns, as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell exciseable liquors by retail, to be drunk or consumed on the premises.¹

Notice to be given of the adjournment of the general annual licensing meeting and special sessions.

5. . . . Whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such special sessions as aforesaid, the day, hour, and place for holding every such adjourned meeting, and every such special session, shall be appointed by precept of the majority of the said justices, directed to the high constable, requiring notices, similar in form to those given at the general annual licensing meeting, to be

¹ See *post*, § 14 of this Act, and as to certificates, 33 & 34 Vict. c. 29, § 4.

affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties.

6. *What justices shall be disqualified from acting.*¹

7. . . . Whenever at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof, not as hereinbefore disqualified, who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licenses under, or of hearing complaints as to offences against, this Act; any law, custom, or usage to the contrary notwithstanding.

When in liberties, etc., two justices not disqualified do not attend, the county justices may act.

8. . . . Nothing herein contained shall extend to give the justices of the county, or any division thereof, any power or authority for the putting of the provisions of this Act in execution within any of the Cinque Ports or either of the two ancient towns, or any of the corporate or other members or liberties of the Cinque Ports or two ancient towns; but it shall be lawful for the justices of and for each of the principal Cinque Ports and two ancient towns, and not as hereinbefore disqualified from acting, and none other, to act within and for the same, and the liberties thereof, not corporate, respectively, as they have been accustomed, and for them or any of them (not so as last aforesaid disqualified), to act within each of the corporate members immediately belonging or subordinate to such principal Cinque Port or ancient town, with the justice or justices of each such corporate member, (not so as last aforesaid disqualified), for the purpose of granting or transferring licenses under, or of hearing complaints as to offences against, this Act,

Powers hereby given to the justices of the county not to extend to the Cinque Ports.

¹ Repealed L. A. 1872; see now, as to disqualified justices, § 60 of that Act.

in all such cases in which the justices of the county are herein-before empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city, or town corporate.¹

Questions respecting licenses to be determined, and licenses to be signed, by the majority of justices at the meeting.

9. . . . When (at any of the meetings aforesaid) any question touching the granting, withholding, or transferring any license, or the fitness of the person applying for such license, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices, not disqualified, who shall be present when such question shall arise; and every license granted under the authority of this Act shall be signed by the majority of the justices, not disqualified, who shall be present when such license shall be granted.

10. *Notice of application for a license to keep a house as an inn, not previously kept as such. Manner of giving such notice, and form of notice.*²

11. *Notice of application to transfer a license. Manner of giving such notice, and form of notice.*²

Any person hindered from attending any licensing meeting by sickness may

12. . . . If any person intending to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any license to be granted under the authority of this Act, or for the transfer of any such license, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such

¹ As to the Cinque Ports, see the following statutes: 51 Geo. III. c. 36; The Cinque Ports Acts, 1855 and 1869 (18 & 19 Vict. c. 48; 32 & 33 Vict. c. 53); The Statute Law Revision Acts, 1875 and 1883 (38 & 39 Vict. c. 66; 46 & 47 Vict. c. 39); The Municipal Corporation Acts, 1882 and 1883 (45 & 46 Vict. c. 50, §§ 248, 256; 46 & 47 Vict. c. 18, §§ 13, 14); Local Government Act, 1888 (51 & 52 Vict. c. 41, § 48 (4). 45 & 46 Vict. c. 50, § 248 (1) and (4) provides as follows:—"The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs. . . . The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licenses or authorities to persons to keep inns, alehouses, or victualling houses, or to sell excisable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace."

² Repealed L. A. 1872, schedule. See now, as to notices regarding licenses and certificates, § 40 of that Act, *post*.

meeting, it shall be lawful for the justices there assembled to grant or transfer such license to such person so hindered from attending, and to deliver the same to any person then present, who shall be duly authorised by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause.¹

authorise
another
person to
attend for
him.

13. . . . Every license which shall be granted under the authority of this Act . . . shall be in force in the counties of Middlesex and Surrey from the 5th day of April, and elsewhere from the 10th day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and every license for the purpose aforesaid, which shall be granted at any other time or place . . . than that hereby directed, except as hereinafter excepted, shall not entitle any person to obtain an excise license for selling exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes.²

Form of
license.

14. . . . If any person duly licensed under this Act shall (before the expiration of such license) die, or shall be, by sickness or other infirmity, rendered incapable of keeping an inn, or shall become bankrupt, or shall take benefit of any Act for the relief of insolvent debtors;³ or if any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such license; or if the occupier of any such house, being about to quit the same, shall have wilfully omitted, or shall have neglected to apply, at the general annual licensing meeting, or at any adjournment thereof, for a license to continue to sell exciseable liquors by retail, to be drunk or consumed in such house; or if any house, being kept as an inn by any person duly

Provision
for death,
change of
occupancy,
or other
contin-
gency.

¹ The provisions of this section were applied to the granting of certificates by 33 & 34 Vict. c. 29, § 4.

² Part of this section prescribing the form of license to be used is repealed, and therefore omitted: see L. A. 1872, schedule, also § 48. This section was applied to certificates by 33 & 34 Vict. c. 29, § 4.

³ The words in italics are repealed by 51 & 52 Vict. c. 57.

licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any Act for the improvement of the highways, or for any other public purpose; or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn; it shall be lawful for the justices assembled as aforesaid at a special session, holden under the authority of this Act, for the division or place in which the house so kept or having been kept shall be situate, in any one of the above-mentioned cases, and in such cases only, to grant to the heirs, executors, or administrators of the person so dying, or to the assigns of such person becoming incapable of keeping an inn, or to the assignee or assignees of such bankrupt or insolvent,¹ or to any new tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators, or assigns shall by sale or otherwise have bonâ fide conveyed or otherwise made over his or their interest in the occupation and keeping of such house, a license to sell exciseable liquors by retail, to be drunk or consumed in such house, or the premises thereunto belonging; or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways, or for any other public purpose, or have become unfit for the reception of travellers, or for the other legal purposes of an inn, and who shall open and keep as an inn some other fit and convenient house, a license to sell exciseable liquors by retail, to be drunk or consumed therein: Provided always, that every such license shall continue in force only from the day on which it shall be granted until the 5th day of April or the 10th day of October then next ensuing, as the case may be: Provided also, that every person intending to apply, in any of the above-mentioned cases, at any such special session for a license to sell exciseable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging, in which exciseable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a license granted at the general annual licensing meeting next before such special session, shall, on some one Sunday

Duration of
license
granted in
event of
such con-
tingency.
Notice
required.

¹ The words in italics are repealed by 51 & 52 Vict. c. 57.

within the six weeks next before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a license to sell exciseable liquors by retail, to be drunk or consumed in a house not theretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor, and on one of the constables or other peace officers of such parish or place.¹

15. . . . It shall be lawful for the clerk of the justices, as well at the annual general licensing meeting as also at any special session to be holden under this Act, to demand and receive from every person to whom a license shall be granted under this Act, for the trouble of such clerk, and for all expenses connected therewith, the sums following, and no more; videlicet for the petty constable or other peace officer, for serving notices, and for all other services hereby required of such petty constable or other peace officer, the sum of one shilling; for the clerk of the justices, for the license, the sum of five shillings; and for preparing the precepts to be directed to the high constable, and notices to be delivered by the petty constable, as required by this Act, the sum of one shilling and sixpence; and every such clerk, who shall demand or receive from any person for such respective fees in this behalf any greater sum or any thing of greater value than the sums hereinbefore specified, being in the whole the sum of seven shillings and sixpence, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds.

Fees to be
paid for
licenses.

Penalty for
taking
larger
fees.

16. . . . No sheriff's officer, or officer executing the legal process of any Court of justice in any county or place, shall be capable of receiving or using any license under this Act;

Persons dis-
qualified to
hold
licenses.

¹ With this section read § 4, *ante*. As to the application of this section to certificates, see *post*, 33 & 34 Vict. c. 29, § 4.

and every license granted or transferred to any person exercising any such office shall be void to all intents and purposes.¹

No excise license to be granted, except to a person licensed under this Act.

17. No license for the sale of any exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, shall be granted by the Commissioners of Excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a license under this Act, and which said license of such justices shall be retained by such person after being produced to the Commissioners or officers of Excise; and every license granted by the Commissioners of Excise, or by any officer of excise, contrary to this provision, shall be null and void to all intents and purposes.²

18. *Penalty for selling exciseable liquors by retail without license: Proviso in favour of executors, etc., and assigns, in cases of death and bankruptcy.*³

19. *Licensed persons to use standard measures in sales of liquors.*⁴

20. *Houses to be closed by order of justices in cases of riot, etc.*⁵

21. *Penalties for offences against tenor of licenses.*⁶

22. *Justices may direct petty constable to carry on proceedings in charges adjourned by them for trial to Quarter Sessions. Expenses of prosecutions to be charged on rates.*⁶

23. *Penalty on witness summoned not attending.*⁶

24. *Penalties on justices, how to be recovered and applied.*⁷

25. *Penalties payable by offenders, how to be recovered; warrant of distress, or imprisonment.*⁶

¹ See, as to beerhouses, 11 Geo. IV. & 1 Wm. IV. c. 64, § 2.

² As to certificates, cf. 32 & 33 Vict. c. 27, § 4.

³ Repealed L. A. 1872. As to this offence, see now § 3 of that Act.

⁴ Repealed L. A. 1872. As to this, see now § 8 of that Act.

⁵ Repealed L. A. 1872. See now § 23 of that Act.

⁶ Repealed L. A. 1872, schedule.

⁷ Repealed 51 & 52 Vict. c. 57, schedule.

26. *Application of penalties: justice may award half to prosecutor, half to treasurer of county.*¹

27. . . . Any person who shall think himself aggrieved by any act of any justice, done in or concerning the execution of this Act, may appeal against such act to the next General or Quarter Sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards, provided that such person shall give to such justice notice in writing of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a recognisance, with two sufficient sureties, before a justice acting in and for such county or place as aforesaid, conditioned to appear at the said session, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognisance being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody for any offence in reference to which the act intended to be appealed against shall have been done; and the Court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said Court shall seem meet; and in case the act appealed against shall be the refusal to grant or to transfer any license, and the judgment under which such act was done be reversed, it shall be lawful for the said Court to grant or to transfer such license, in the same manner as if such license had been granted at the general annual licensing meeting, or had been transferred at a special session; and the judgment of the said Court shall be final and conclusive to all intents and purposes; and in case of the dismissal of such appeal, or of the affirmance of the judgment on which such act was done, and which was appealed against, the said Court shall adjudge and order the said judgment to be carried into execution,

Appeal may be made to the Quarter Sessions.

Judgment of the Quarter Session to be final.

¹ Repealed L. A. 1872, schedule.

and costs awarded to be paid, and shall if necessary issue process for enforcing such order; provided that no justice shall act in the hearing or determination of any appeal to the General or Quarter Sessions as aforesaid from any act done by him in or concerning the execution of this Act: Provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city, or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved to appeal against any such act as aforesaid, if he shall think fit, to the Quarter Sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained.¹

Justices to bind parties to appear to give evidence at Quarter Sessions.

28. . . . When any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognisance as hereinbefore directed, it shall be lawful for the justice before whom such recognisance shall have been entered into to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognisance to appear at the said General or Quarter Session, and to give evidence in such appeal; and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognisance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and, if such person shall continue to refuse to enter into such recognisance, to commit him to the common gaol or house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognisance, or shall be otherwise discharged by due course of law.¹

Court to adjudge costs in certain cases.

29. . . . In every case where notice of appeal against the judgment of any justice in or concerning the execution of this Act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall

¹ This section is repealed by L. A. 1872, schedule, except in so far as it relates to renewals and to transfers under §§ 4 and 14 of this Act. As to the application of this section to certificates, see 33 & 34 Vict. c. 29, § 4 (5). As to time of notice, etc., see now 12 & 13 Vict. c. 45, *post*.

have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the Court to whom such appeal shall have been made or intended to be made, and such Court is hereby required, to adjudge and order that the party so having appealed, or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum, by way of costs, as shall in the opinion of such Court be sufficient to indemnify such justice from all cost and charge whatsoever to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said Court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid; and in every case in which the judgment so appealed against shall be reversed, it shall be lawful for such Court, if it shall think fit, to adjudge and order that the treasurer of the county or place in and for which such justice whose judgment shall have been so reversed shall have acted on the occasion when he shall have given such judgment, shall pay to such justice, or to whomsoever he shall appoint, such sum as shall, in the opinion of such Court, be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts.¹

30. *Actions against justices must be commenced within three calendar months.*²

31. *Convictions to be on oath of credible witness or witnesses.*³

32. *Form of conviction.*³

33. *Convictions to be returned to the Quarter Sessions and filed of record.*³

34. *Writ of certiorari not to be allowed.*³

¹ See note to § 27, *ante*. As to costs, see also 12 & 13 Vict. c. 45, *post*.

² Repealed 56 & 57 Vict. c. 61. See now L. A. 1872, § 60.

³ Repealed L. A. 1872, schedule.

35. *Repeal of earlier enactments.*¹

Act not to affect the two Universities; nor to alter time of licensing in London;

nor any law of excise; nor to prohibit the sale of beer at fairs in certain cases.

Rules for the interpretation of this Act.

36 . . . Nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or the powers of the Chancellors or Vice-Chancellors of the same, as by law possessed under the respective charters of the said Universities, or otherwise; or the Masters, Wardens, Freemen, and Commonalty of the Vintners of the City of London, but not to extend to those Freemen of the said Company of Vintners who have obtained the same by redemption only; nor to alter the time of granting licenses for keeping inns in the city of London: Provided also, that nothing in this Act contained shall alter any law relating to the revenue of excise, except so far as the same is hereby expressly altered and otherwise provided for; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorised to do before the passing of this Act.²

37. And in order to remove doubts as to the meaning of certain words in this Act, be it enacted, that the word "justice" shall be deemed to mean justice of the peace; and that the words "treasurer of the county or place" shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of moneys from and out of which the cost of public prosecutions have been usually defrayed; that the words "peace officer" shall be deemed to include any petty constable, tithingman, headborough, beadle, or bailiff; that the words "parish officer" shall be deemed to include any churchwarden, chapelwarden, or overseer of the poor; and that the said words "justice," "treasurer of the county or place," "peace officer," "parish

¹ By this section (now itself repealed, 36 & 37 Vict. c. 91), the following Acts and parts of Acts were repealed: 5 & 6 Edw. VI. c. 25; 1 Jac. I. c. 9; 4 Jac. I. c. 4, 5; 7 Jac. I. c. 10; 21 Jac. I. c. 7; 1 Car. I. c. 4; 3 Car. I. c. 3; 9 Geo. II. c. 23, §§ 14, 15, 20; 24 Geo. II. c. 40, § 24; 26 Geo. II. c. 13, § 12; 26 Geo. II. c. 31; 28 Geo. II. c. 19, § 2; 29 Geo. II. c. 12, §§ 23, 24; 30 Geo. II. c. 24, § 14; 5 Geo. III. c. 46, §§ 20, 21, 22; 32 Geo. III. c. 59; 38 Geo. III. c. 54, § 13; 39 Geo. III. c. 86; 48 Geo. III. c. 143, §§ 7, 10; 4 Geo. III. c. cxxv. §§ 1-6.

² As to these exceptions, see Section XII. p. 70, *ante*. As to sales at fairs, see now L. A. 1872, § 18, *post*.

officer," and the words "high constable," and the words "petty constable," and the words "overseer of the poor," and the words "clerk of justices," shall each be deemed to include any person acting as such, and any number of justices, treasurers, peace officers, parish officers, high constables, petty constables, overseers of the poor, and clerks of justices; and that the word "person," and the word "party," shall be deemed to include any number of persons and parties; and that the meaning of the aforesaid several words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only; and that the word "notice," and the word "license," and the word "adjournment," and the word "day," and the word "time," and the word "house," and the word "place," shall each be deemed to include any number of notices, licenses, adjournments, days, times, houses, or places; and that the word "county," and the words "county or place," shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words "division or place" shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words "parish or place" shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word "inn" shall be deemed to include any inn, alehouse, or victualling house; and that the word "inn, alehouse, or victualling house" shall be deemed to include all houses in which shall be sold by retail any exciseable liquor, to be drunk or consumed on the premises; and that the words "exciseable liquor" shall be deemed to include any ale, beer, or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise; and that the word "penalty" shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the said several words shall not be restricted, although the same may be subsequently referred to in the singular number only.

*Schedules to which this Act refers.¹**A. Form of notice on application for a new license.**B. Form of notice on application for a transfer at special sessions.**C. Form of license.*

THE BEERHOUSE ACT, 1830.

(11 GEO. IV. & 1 WM. IV. c. 64.)

An Act to permit the General Sale of Beer and Cider by Retail in England. [23rd July, 1830.]

Whereas it is expedient, for the better supplying the public with beer in England, to give greater facilities for the sale thereof than are at present afforded by licenses to keepers of inns, ale-houses, and victualling houses; be it therefore enacted, etc., it shall and may be lawful for any and every person, who shall obtain a license for that purpose under the provisions of this Act, to sell beer, ale, and porter by retail in any part of England, in any house or premises specified in such license; any thing in any Act or Acts heretofore made, or in force at the time of the passing of this Act, to the contrary in anywise notwithstanding.²

All persons
licensed
under this
Act may
sell beer by
retail.

Parties de-
sirous of
retailing
beer shall
take out a
license.

2. . . . It shall be lawful for every and any person being a householder (other than and except such persons as are hereinafter specially excepted), who shall be desirous of selling beer, ale, and porter by retail under the provisions of this Act, to apply for and to obtain an excise license for that purpose; and in every application for such license there shall be specified, set forth, and inserted the Christian name and surname of the party applying for such license, and a description of the house or premises in which beer, ale, and porter is intended to be sold by retail by such

¹ Repealed 36 & 37 Vict. c. 91. No statutory forms are now provided for these notices. As to forms of licenses and certificates, see L. A. 1872, § 48, and this appendix, *post*.

² Part of this section repealed, 53 & 54 Vict. c. 33.

person; *together with the Christian names and surnames and the occupation and residence of the person or persons who shall be proposed as surety or sureties for the party so to be licensed*; and any and every such license which shall be taken out within the limits of the chief office of excise in London shall be granted under the hands and seals of two or more of the Commissioners of Excise for the time being, or of such persons as they the said Commissioners of Excise, or the major part of them, for the time being, shall from time to time authorise, employ, or direct for that purpose; and any and every such license which shall be taken out in any part of England not within the said limits shall be granted under the respective hands and seals of the several collectors and supervisors of excise within their respective collections and districts; and it shall be lawful for the said Commissioners of Excise, or any two or more of them respectively, and for the person to be authorised, employed, or directed by the said Commissioners or the major part of them, and also for all such collectors and supervisors, and they are hereby respectively authorised and required, *within ten days after the application shall have been made for the same, and upon execution by the party and his surety or sureties of the bond hereinafter mentioned, and any time after upon the execution of such bond, to grant such license to the persons who shall apply for the same, the person so applying first paying for such license a duty of two pounds and two shillings, to be applied and accounted for as hereinafter directed*; and every such license shall be dated on the day when the same shall be granted; *and shall expire at the end of twelve calendar months after the day on which such license shall be dated, and every such license shall be according to the form in the schedule annexed to this Act, and shall be duly registered in the proper department of the excise*: Provided always, that no such license shall authorise or entitle the party licensed to receive any license to sell or retail wine or spirits, anything in any Act or Acts of Parliament to the contrary thereof notwithstanding; and that no such license shall be granted to any person being a sheriff's officer, or officer executing the legal process of any Court of justice, *nor to any person not being a householder assessed to the poor rate in the parish or place in which he shall be licensed to sell beer by retail, and that any license granted*

In London,
licenses
shall be
granted by
the Com-
missioners
of Excise,
etc.;

elsewhere
in England,
by the col-
lectors and
supervisors
of excise.

License
duty.

No license
shall be
granted to
a sheriff's
officer.

Register of
licenses.

Licenses
shall be
produced
for the in-
spection of
magis-
trates.

to any such person shall be void to all intents and purposes ; and a list or register of every license so granted, specifying the name and place of abode of every person licensed, *and of his sureties respectively*, and the name and description of the house mentioned in such license, shall be kept at the excise office with respect to all licenses granted by the Commissioners of Excise or any person authorised by them, and at the office or dwelling-house of every collector and supervisor of excise in their and his respective collections and districts ; and such list or register shall at all times be produced to and shall be open to the inspection and perusal of any magistrate of the county or place where such license shall be granted and where such house shall be situate ; and a copy of such list or register shall once in every calendar month be transmitted by every such collector or supervisor to the clerk of the magistrates for the district in which such license shall be granted ; and any copy of or extract from such list or register, which shall or may be at any time required by the clerk to the magistrates, shall be given to him by such collector or supervisor whenever thereto required.¹

License
duty shall
be under
the man-
agement of
the Com-
missioners
of Excise,
and carried
to the Con-
solidated
Fund.

3. . . . The duty by this Act imposed on licenses to sell beer by retail shall be under the management of the Commissioners of Excise for the time being, and shall and may be respectively raised, levied, collected, answered, paid, and recovered in such and the like manner, and in or by any or either of the general or special means, ways, or methods by which any other duties of excise on licenses are or may be raised, levied, collected, answered, paid, or recovered ; and all the moneys arising by the duties by this Act imposed and made payable as aforesaid, the necessary charges of raising and accounting for the same excepted, shall from time to time be paid into the receipt of his Majesty's Exchequer at Westminster, and the said money so paid unto the receipt of the exchequer as aforesaid shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland.

¹ Introductory words of this and subsequent sections repealed by 51 & 52 Vict. c. 57. The words in italics repealed by 32 & 33 Vict. c. 27, and 36 & 37 Vict. c. 91 ; except the duty, which is repealed by 4 & 5 Wm. IV. c. 85, § 13.

4. *Party requiring license shall enter into bond, with sureties for payment of penalties.*¹

5. *No person licensed to sell beer shall be competent to be a surety.*¹

6. *Persons licensed to retail beer shall put up descriptive boards.*²

7. . . . No person shall sell any beer by retail under the provisions of this Act at any time after the expiration of any license granted under this Act, nor in any house or place not specified in such license: Provided always, that it shall be lawful for any person so licensed to take out a fresh retail license for the selling beer by retail before the expiration of any former retail license, and so from year to year; and if any person, not being duly licensed to sell beer as the keeper of a common inn, alehouse, or victualling house, shall sell any beer by retail without having an excise license in force authorising such person so to do, or after the expiration of any such license, or without renewing such license in manner aforesaid, or in any house or place not specified in such license, or if any such person so licensed shall deal in or retail any wine or spirits, every such person so offending shall for every such offence forfeit and lose the sum of twenty pounds.

No person shall sell beer after expiration of his license. License may be renewed yearly. Penalty on selling without license, £20.

8. . . . The said last-mentioned fine, penalty, or forfeiture of twenty pounds, shall and may be sued for, recovered, levied, mitigated, and distributed by such ways, means, and methods, as any fine, penalty, or forfeiture may be sued for, recovered, levied, mitigated, or distributed by any law or laws of excise; and that one moiety of every such fine, penalty, or forfeiture shall be to his Majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same.

Such penalty may be recovered as other excise penalties.

9. . . . All the powers and authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things, which in and by an Act made in the eighth year of the reign of his late Majesty King George the Fourth,

Powers of Excise Act, 7 & 8 Geo. IV. c. 53, etc., extended to this Act.

¹ Repealed 30 & 31 Vict. c. 90, § 13.

² Repealed L. A. 1872, § 11, schedule 2.

intituled An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland, or by any other law now in force relating to his Majesty's revenue of excise, are provided and established for enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the penalties thereby imposed, and all matters and things therein relating to excise licenses (except where otherwise provided by this Act, or repugnant thereto), shall and may be exercised, practised, applied, used, and put in execution in and for the enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the said penalty of twenty pounds, and all matters and things relating to the said licenses hereby authorised and required to be granted as aforesaid, as fully and effectually to all intents and purposes as if all and every the said powers, authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in this present Act; any thing hereinafter contained to the contrary thereof in anywise notwithstanding.

Proviso for
partners.

License
shall not
extend to
any other
house.

10. Provided always, . . . that persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one license in any one year, for selling any beer by retail under the provisions of this Act: Provided also, that no one license which shall be granted by virtue of this Act shall authorise or empower any person or persons to sell any beer, ale, or porter, under the provisions of this Act, in any house or place other than the house or place mentioned in such license for selling beer, ale, and porter by retail under the provisions of this Act, and in respect whereof such license shall be granted.¹

11. *Houses to be closed by order of justices in cases of riot, etc.*²

12. *Standard measures to be used.*²

13. *Penalty on retailers permitting drunkenness, etc., in their houses; penalty on mixing drugs in beer or adulterating beer; penalty on selling after conviction of second offence.*³

¹ Cf. *ante*, 6 Geo. IV. c. 81, 10.

² Repealed L. A. 1872, schedule. See now § 23 of that Act.

³ Repealed L. A. 1872, schedule. See now § 13 of that Act.

14. *Retailers' houses shall not be open before four in the morning, nor after ten in the evening; nor on Sundays between ten and one, or three and five in the day.*¹

15. *Penalties recoverable before two justices in petty sessions within three months after offence committed.*²

16. *Appeal to the Quarter Sessions.*³

17. *Court to adjudge costs of appeal in certain cases.*²

18. *Proceedings at the sessions in certain cases to be carried on by the petty constable. Expenses of prosecution to be charged on the county rates.*²

19. *In default of payment of penalties, proceedings may be had against the sureties.*²

20. *Penalty on witnesses not attending.*²

21. *Penalties may be levied by distress. If offender has not sufficient goods whereon to levy justices may commit him.*

22. *Application of penalties.*²

23. And be it further enacted, that whenever at any session for any liberty, county of a city, county of a town, city or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city or town corporate, to act within such liberty or place, and with the justice or justices thereof who shall be present at any such sessions as aforesaid, for the purpose of hearing complaints as to offences against this Act; any law, custom, or usage to the contrary notwithstanding.

If justices of liberties, etc., do not attend at sessions the county justices may act.

24. Provided always, . . . that nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this Act in execution within any of the Cinque

Powers hereby given to justices of counties

¹ Repealed 3 & 4 Vict. c. 61, § 14. See now L. A. 1874, § 3.

² Repealed L. A. 1872, schedule.

³ Repealed L. A. 1872, schedule; and see § 52 of that Act.

not to
extend to
the Cinque
Ports.

Ports or either of the two ancient towns, or any of the corporate or other members or liberties of the Cinque Ports or two ancient towns; but that it shall be lawful for the justices of and for each of the principal Cinque Ports and two ancient towns, and the liberties thereof, and for the justices of and for the liberties thereof, and the corporate members, to act within the same respectively as they have been accustomed, and for them or any of them to act within each of the corporate members immediately belonging or subordinate to such principal Cinque Port or ancient town, with the justice or justices of each such corporate member, for the purpose of hearing complaints as to offences against this Act in all such cases in which the justices of the county are hereinbefore empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city or town corporate.¹

25. *Form of conviction.*²

26. *Convictions to be returned to the Quarter Sessions and filed of record.*³

27. *Writ of certiorari not to be allowed.*²

28. *Actions against justices.*³

Act not to
affect the
two Uni-
versities,
nor the
Vintners'
Company
in London;

29. Provided always, . . . that nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers and authorities vested by charter or otherwise in the chancellors, masters, and scholars of the said Universities, and their successors, or in the master, wardens, freemen, and commonalty of the Vintners of the city of London, but not to extend to those freemen of the said company of Vintners who have obtained the same by redemption only; nor in any way to affect any license to the keeper of any inn, alehouse, or victualling house, unless in so far as relates to the sale of beer by retail; nor to prohibit any person from selling beer in booths or other places at the

nor to pro-
hibit the
sale of beer

¹ As to the Cinque Ports, see *ante*, 9 Geo. IV. c. 61, § 8.

² Repealed L. A. 1872, schedule.

³ Repealed 57 & 58 Vict. c. 56.

time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorised to do before the passing of this Act.¹

30. And whereas it is expedient that the sale of cider and perry by retail should be licensed in like manner and should be subject to the like regulations as the sale of beer; be it therefore enacted, that *from and after the tenth day of October one thousand eight hundred and thirty*, it shall be lawful for any person desirous of selling cider and perry by retail to apply for and to obtain an excise license for that purpose, under the same regulations in all respects (except as hereinafter is otherwise provided) as are in this Act prescribed and contained with respect to persons desirous of selling beer, ale, and porter by retail, and of being licensed for that purpose; and that all the clauses, regulations, and provisions in this Act contained relating to the sale of beer by retail, and to the licenses for selling the same, *and to the sureties for the parties licensed*, and to the conduct of the parties licensed, and to all other matters whatever respecting the selling of beer by retail, and the retailers thereof, and the licenses for the same, and the houses where the same are sold, and the penalties against the parties licensed, shall be taken and deemed to be applicable to the sale of cider and perry by retail, and to licenses for the same, and to the sellers of cider and perry by retail, as if cider and perry, and the retailers thereof, were expressly mentioned and specified in and throughout this Act; Provided always, that the person receiving a license for selling cider or perry by retail shall pay for such license a duty of one pound one shilling and no more, instead of the duty of two pounds two shillings hereinbefore mentioned, and which said duty of one pound one shilling shall be applied in like manner as the said duty of two pounds two shillings is hereinbefore directed to be applied; *and every such license shall be according to the form in the schedule annexed to this Act*: Provided also, that any person licensed under this Act to sell beer by retail may sell also cider and perry by retail without receiving a separate license for that purpose; but that no person licensed to sell cider

Licenses to retail cider may be granted under the regulations of this Act, on payment of £1 ls. duty.

Provisions and penalties of this Act with respect to the sale of beer to apply to the sale of cider.

Persons licensed to retail beer may also retail cider.

¹ See *ante*, Section XII. p. 70; and now as to sales at fairs, L. A. 1874, § 18, *post*.

and perry by retail, and paying for such license, as herein provided, the sum of one pound and one shilling, shall be at liberty to sell beer by retail.¹

Covenants
against
houses,
etc., being
used as
public
houses to
extend to
persons
licensed
under this
Act.

31. Provided always that any and every covenant or clause of restriction contained in any lease or contract between any landlord and tenant, whereby the trade or business of a victualler or publican is prohibited from being carried on in any house, building, or place mentioned or comprised in such lease or contract, or whereby any such house, building, or place is prohibited from being used as a public-house or alehouse, shall apply and extend, and shall be construed to apply and extend to every person who shall be licensed to sell beer, ale, or porter, or cider or perry, under the provisions of this Act, and to any and every house specified and mentioned in the license granted to such persons.

Rules for
the inter-
pretation
of this Act.

32. And in order to remove doubts as to the meaning of certain words in this Act, be it enacted, that the word "justice" shall be deemed to mean justice of the peace; and that the word "person," and the word "party," shall be deemed to include any number of persons and parties; and that the word "license," and the word "day," and the word "time," and the word "house," and the word "place," shall each be deemed to include any number of licenses, days, times, houses, or places; and that the word "beer" shall in all cases be deemed to include beer, ale, and porter; and that the word "cider" shall in all cases be deemed to include cider and perry; and that the word "county," and the words "county or place," shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words "division or place" shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words "parish or place" shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own

¹ Words in italics repealed by 53 & 54 Vict. c. 33; and 37 & 38 Vict. c. 35. See also 36 & 37 Vict. c. 91.

poor; and that the word "penalty" shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the several words in this Act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only.

*Schedule—Form of license.*¹

THE EXCISE ACT, 1834.

(4 & 5 WM. IV., c. 75.)

An Act to repeal the Duties on Spirits made in Ireland, and to impose other Duties in lieu thereof; and to impose additional Duties on Licenses to Retailers of Spirits in the United Kingdom.
[14th August, 1834.]

10. And whereas an Act was passed in the ninth year of the reign of his late Majesty King George the Fourth, for regulating the retail of exciseable articles and commodities to passengers on board of passage vessels from one part to another of the United Kingdom, and by an omission in the said Act no power is given to any officer of excise, or any other persons than the Commissioners of Excise, to grant the licenses thereby authorised to be granted, whereby great inconvenience and delay is occasioned to persons desirous of obtaining such licenses; for remedy whereof be it further enacted, that all licenses to be granted under the said Act, or any other Act relating to the revenue of excise, may be granted by the Commissioners of Excise, or by any officer or officers of excise who shall be authorised by the Commissioners of Excise to grant the same, and all licenses granted by any officer or officers so authorised shall be good, valid, and effectual; any thing in any Act contained to the contrary notwithstanding.²

¹ Repealed 36 & 37 Vict. c. 91.

² The whole of this Act except the above section and § 9 (relating to the annual value of houses licensed at the passing of this Act), was repealed by 37 & 38 Vict. c. 35.

THE BEERHOUSE ACT, 1834.

(4 & 5 Wm. IV. c. 85.)

An Act to amend an Act passed in the First Year of His present Majesty, to permit the general Sale of Beer and Cider by Retail in England. [15th August, 1834.]

Whereas much evil has arisen from the management and conduct of houses in which beer and cider is sold by retail under the provisions of an Act passed in the first year of the reign of his present Majesty, intituled *An Act to permit the general Sale of Beer and Cider by Retail in England*, and it is expedient to amend the provisions of the said Act in certain particulars: Be it therefore enacted, etc., that it shall be lawful for the Commissioners of Excise, or other persons duly authorised, to grant licenses for the sale of beer, ale, porter, cider, or perry, under the provisions of the said recited Act, to any person applying for the same, but such license shall not authorise the person obtaining it to sell beer or cider to be drank or consumed in the house or on the premises specified in the same license, unless the same be granted upon the certificate hereinafter required.¹

1 Wm. IV.
c. 64.

Licenses to
be granted
for sale of
beer, but
not to
authorise
consump-
tion thereof
on the
premises
unless
granted
upon cer-
tificate.

2. Every person applying for a license to sell beer, to be drank on the premises, to deposit with the Commissioners of Excise a certificate of good character signed by six rated inhabitants of the parish, etc., and certified by one of the Overseers.²

3. Penalty on Overseers refusing to certify as required.²

4. Permitting drinking beer in a neighbouring house or in any shed, etc., with intent to evade the provisions of this Act to be deemed drinking on the premises.³

To what
persons
provisions
for billeting
soldiers
under Mu-
tiny Acts

5. . . . The provisions in respect of billeting soldiers in victualling houses contained in any Act of Parliament for punishing mutiny and desertion, and for the better payment of the army and their quarters shall extend only to such persons licensed under this and the said recited Act as shall

¹ Preamble repealed 53 & 54 Vict. c. 51.

² Repealed 32 & 33 Vict. c. 27.

³ Repealed L. A. 1872, schedule.

be licensed to sell beer or cider to be drunk and consumed ^{shall extend.} in the house or on the premises, and shall not extend or be deemed or construed to extend to such persons as shall be licensed to sell beer or cider not to be consumed on the premises; anything in the said recited Act or this Act to the contrary notwithstanding.¹

6. *Justices of the peace to regulate the times of opening and closing houses; hours to be fixed once a year; appeal; proviso as to Sunday, etc.*²

7. *Empowering constables, etc., to visit licensed houses.*³

8. *Penalty for making or using false certificates.*⁴

9. *No license for beer to be drank on the premises to be granted without a certificate.*

10. *Retailers compellable to produce their licenses on requisition of two magistrates.*³

11. . . . All the powers, regulations, proceedings, forms, penalties, forfeitures, and provisions contained in the said recited Act, with reference to persons licensed under the said Act, and to the offences committed by such persons against the said Act, or against the tenor of any license granted under the said Act, *and also with reference to the sureties of such persons*, and to persons doing the things thereby prohibited without the license required by the said Act, shall (except where they are altered by this Act or are repugnant thereto) be deemed and taken to be applicable to all persons licensed under this Act, and to all offences committed by such persons of the same description as the offences mentioned in the said Act, *and to the sureties of all such persons in respect of such offences*, and to all persons doing, without the license required by this Act, things of the same description as the things prohibited without the license required by the said Act, as fully and effectually as if all the said powers, regulations, proceedings, forms,

The powers, provisions, and penalties of 1 W. 4, c. 64 to apply to persons licensed under this Act and to their sureties, etc.

¹ Introductory words of this and subsequent sections repealed by 51 & 52 Vict. c. 57. As to billets see now 44 & 45 Vict. c. 58, *post*.

² Repealed 3 & 4 Vict. c. 61. See now L. A. 1874, § 3.

³ Repealed L. A. 1872, schedule.

⁴ Repealed 32 & 33 Vict. c. 27.

penalties, forfeitures, and provisions had been repeated and re-enacted in this Act, with reference to persons licensed under this Act, *and to the sureties of such persons*, and to persons acting without the license required by this Act; *and also all the powers, regulations, and provisions in the said Act contained, authorising any party convicted to appeal to the General Session or Quarter Sessions of the peace against any conviction under the said Act, shall also extend and apply to any convictions under this Act.*¹

Recited
Act to con-
tinue in
force, ex-
cept as
hereby
altered.

12. . . . All the provisions of the said recited Act shall be deemed and taken to be in full force, save and except where the same are altered by this Act; and that so much of the said Act as relates to the interpretation of certain words therein mentioned shall be applied to the interpretation of the same words where used in this Act.

13. *Duties on beer licenses under 1 Wm. IV. c. 64 repealed, and new duties granted in lieu thereof.*²

Such
duties to
be under
the man-
agement of
Commis-
sioners of
Excise, and
to be re-
covered
and ac-
counted for
under the
provisions
of recited
Act.

14. . . . The said last-mentioned duties shall be under the management of the Commissioners of Excise, and shall be raised, levied, collected, and recovered, and accounted for and paid, in the same manner, and by the same means, and under the same regulations and provisions, pains, penalties, and forfeitures, as are prescribed in the said recited Act with respect to the duties hereby repealed; all which said regulations and provisions, pains, penalties, and forfeitures, shall apply to the duties hereby imposed, and shall be enforced in respect of the same as fully and effectually as if repeated and re-enacted in this Act.

Not to
affect duty
on licenses
to retail
cider and
perry; but
such
licenses to
state par-
ticulars.

15. Provided always . . . that nothing herein contained shall affect, or be deemed or construed to affect, the amount of duty payable according to the provisions of the said recited Act on licenses, to retail cider and perry; but in every such license shall be specified whether the same is granted for the sale of cider and perry by retail to be drunk or consumed not in or upon the house or premises where

¹ Words in italics repealed by L. A. 1872, and 38 & 39 Vict. c. 66.

² Part of this section is repealed by 53 & 54 Vict. c. 51, the rest is omitted as impliedly repealed by 43 & 44 Vict. c. 20, *post*.

sold, or for the retail of cider and perry to be drank and consumed in or upon the house and premises where sold.

16. . . . No license to be granted under the said recited Act and this Act for the sale of beer or cider shall authorise any person to take out or hold any license for the sale of wine, spirits or sweets or made wines, or mead or metheglin; and if any person licensed under the said recited Act and this Act to sell beer or cider shall permit or suffer any wine or spirits, sweets or made, wines, mead, or metheglin, to be brought into his house or premises to be drunk or consumed there, or shall suffer any wine, spirits, sweets, mead, or metheglin to be drunk or consumed in his house or premises by any person whomsoever, such person shall over and above any excise penalty or penalties to which he may be subject, forfeit twenty pounds, to be recovered, levied, mitigated, and applied in the same manner as other penalties (not being excise penalties) are by this Act to be recovered, levied, mitigated, and applied.

Licenses under this Act not to authorise persons to hold licenses for sale of wine. Penalty on persons licensed under this Act permitting wine or spirits to be consumed on the premises.

17. . . . Every person not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, alehouse, or victualling house who shall sell any beer or cider or perry by retail, not to be drank or consumed in or upon the house or premises where sold, without having an excise retail license in force authorising him so to do, shall forfeit ten pounds; and every person not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, alehouse, or victualling house who shall sell any beer, cider, or perry by retail, to be drank or consumed in or upon the house or premises where sold, without having an excise retail license in force authorising him so to do, whether such person shall or shall not be licensed to sell beer to be drank or consumed off the premises where sold, shall forfeit twenty pounds; which said penalties shall be sued for and recovered, mitigated and applied, by the same means and under the same provisions as any other penalty may be sued for and recovered, mitigated and applied, under any law or laws of excise.

Penalty on unlicensed persons selling beer and cider by retail to be drank off the premises, £10; to be drank on the premises, £20.

18. *The board over the door of premises to state "Not to be drunk on the premises," or "To be drunk on the premises."*¹

What is a retailing of beer, cider, or perry.

19. *And whereas doubts are entertained as to what is a selling of beer or cider or perry by retail; be it therefore enacted, that every sale of any beer, or of any cider or perry, in any less quantity than four gallons and a half, shall be deemed and taken to be a selling by retail.*²

Persons licensed to sell beer or cider under this Act liable to penalties for selling spirits or wine without license.

20. *And whereas doubts have been entertained whether persons licensed to sell beer or cider under the said Act of the first year of his Majesty's reign, who shall sell spirits or wine, or sweets or made wines, or mead or metheglin, without being licensed so to do, are liable to the penalties imposed by the laws of excise for selling spirits or wine, or sweets or made wines, or mead or metheglin without license: Be it therefore declared and enacted, that all persons licensed under the said recited Act and this Act, selling wine or spirits, or any sweets or made wines, or mead or metheglin, shall be liable to and shall incur all the penalties imposed by the laws of excise for selling spirits or wine, sweets or made wines, mead or metheglin, without license.*²

21. *Certificate not to be required for houses in certain situations if population exceed 5000. Premises licensed for indoor consumption in London, Westminster, etc., must be of the value of ten pounds per annum.*³

22. *Service of summons or order.*⁴

23. *Commencement of Act.*³

*Schedule.—Form of certificate.*³

¹ Repealed L. A. 1872, schedule.

² Words in italics repealed by 53 & 54 Vict. c. 51.

³ Repealed 37 & 38 Vict. c. 35.

⁴ Repealed by L. A. 1872.

THE EXCISE ACT, 1835.

(5 & 6 WM. 4, c. 39.)

An Act to exempt certain Retailers of Spirits to a Small Amount from the Additional Duties on Licenses; and to discontinue the Excise Survey on Wine, and the Use of Permits for the Removal thereof. [31st August, 1835.]

7. It shall be lawful for the Commissioners and Officers of Excise, and they are hereby authorised and empowered, to grant retail licenses to any person to sell beer, spirits, and wine in any theatre established under a royal patent, or in any theatre or other place of public entertainment licensed by the Lord Chamberlain or by justices of the peace, without the production by the person applying for such license or licenses of any certificate or authority for such person to keep a common inn, alehouse, or victualling house; any thing in any Act or Acts to the contrary notwithstanding.¹

Licenses may be granted to sell beer, spirits, and wine in theatres, etc., without the production of a certificate.

THE METROPOLITAN POLICE ACT, 1839.

(2 & 3 VICT. c. 47.)

An Act for further improving the Police in and near the Metropolis. [17th August, 1839.]

41. . . . After the passing of this Act, every person who, by reason of his or her freedom of the mystery or craft of Vintners of the City of London, or of any right or privilege of such mystery, shall claim to be entitled to sell foreign wine by retail to be drunk or consumed on the premises, within the metropolitan police district, without license, shall be subject to all the provisions of all Acts made for the regulation of persons so licensed (except those provisions which require

Freemen of Vintners' Company subject to certain provisions.

¹ §§ 3-6 of this Act relating to retailers of wine, though still unrepealed, seem now of little importance and are therefore omitted. As to sales in theatres, see L. A. 1872, § 72, *post*, and Section XXII., *ante*, p. 199.

or refer to the taking out of a license either from any justice of the peace or from the Commissioners of Excise).¹ . . .

Penalty for permitting drunkenness, etc., in house of public resort.

44. And whereas it is expedient that the provisions made by law for preventing disorderly conduct in the houses of licensed victuallers be extended to other houses of public resort: be it enacted that every person who shall have or keep any house, shop, room, or place of public resort within the metropolitan police district, wherein provisions, liquors, or refreshments of any kind shall be sold or consumed (whether the same shall be kept or retailed therein, or procured elsewhere), and who shall wilfully or knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly suffer any unlawful games or any gaming whatsoever therein, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein, shall for every such offence be liable to a penalty of not more than five pounds.² . . .

Power to enter unlicensed theatres, and take away persons found there.

46. . . . It shall be lawful for the said Commissioners of Police, by order in writing, to authorise any superintendent belonging to the Metropolitan Police, with such constables as he may think necessary, to enter into any house or room kept or used within the said district for stage-plays or dramatic entertainments into which admission is obtained by payment of money, and which is not a licensed theatre, at any time when the same shall be open for the reception of persons resorting thereto, and to take into custody all persons who shall be found therein without lawful excuse; and every person keeping, using, or knowingly letting any house or other tenement for the purpose of being used as an unlicensed theatre shall be liable to a penalty not more than twenty pounds, or in the discretion of the magistrate, may be committed to the house of correction, with or without hard labour, for a time not more than two calendar months; and every person performing or being therein without lawful excuse shall be liable to a penalty not more than forty shillings; and a conviction under this Act for this offence shall not exempt the owner, keeper, or manager of any such house,

¹ Part of this section repealed, 51 & 52 Vict. c. 3.

² Part of this section repealed, 37 & 38 Vict. c. 96.

room, or tenement from any penalty or penal consequences to which he may be liable for keeping a disorderly house, or for the nuisance thereby occasioned.

48. Commissioners empowered to authorise superintendents of police to enter gaming-houses.

58. . . . Every person who shall be found drunk in any street or public thoroughfare within the said district, and who while drunk shall be guilty of any riotous or indecent behaviour, and also every person who shall be guilty of any violent or indecent behaviour in any police station, shall be liable to a penalty of not more than forty shillings for every such offence, or may be committed, if the magistrate before whom he shall be convicted shall think fit, instead of inflicting on him any pecuniary penalty, to the house of correction for any time not more than seven days.¹

Drunkards guilty of riotous or indecent behaviour may be imprisoned.

76. . . . Offences against this Act to be prosecuted summarily.

THE COUNTY POLICE ACT, 1839.

(2 & 3 VICT. c. 93).

An Act for the Establishment of County and District Constables by the Authority of Justices of the Peace.

[27th August, 1839].

16. . . . If any victualler or keeper of any house, shop, room, or other place for the sale of any liquors, whether spirituous or otherwise, shall knowingly harbour or entertain any constable belonging to the said force, or permit such constable to abide or remain in his house, shop, room, or other place, during any part of the time appointed for his being on duty, every such victualler or keeper, as aforesaid, being convicted thereof before any two justices of the peace for the county, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as they shall think meet.²

Penalty on publicans harbouring constables during the hours of duty.

¹ Cf. L. A. 1872, §§ 12, 59; also 10 & 11 Vict. c. 89, § 29.

² Cf. 10 & 11 Vict. c. 89, § 34, and L. A. 1872, § 16, *post*.

THE BEERHOUSE ACT, 1840.

(3 & 4 VICT. c. 61.)

*An Act to amend the Acts relating to the general sale of beer and
cider by retail in England.* [7th August, 1840.]

Whereas an Act was passed in the first year of the reign of
his late Majesty King William the Fourth, intituled "An Act to
11 Geo. IV., & 1 Wm. IV. c. 64. permit the general Sale of Beer and Cider by Retail in England :"
And whereas another Act was passed in the fourth and fifth years
of the reign of his said late Majesty, intituled "An Act to amend
4 & 5 Wm. IV. c. 85. an Act passed in the First Year of his present Majesty, to permit
the general Sale of Beer and Cider by Retail in England : " And
whereas it is expedient to alter and amend the said Acts : Be it
therefore enacted, etc., No license to sell beer or cider by retail
under the said recited Acts or this Act shall be granted to
any person who shall not be the real resident holder and
occupier of the dwelling house in which he shall apply to be
licensed, nor shall any such license be granted in respect of
any dwelling house which shall not, with the premises occu-
pied therewith, be rated in one sum to the rate for the relief
of the poor of the parish, township, or place in which such
house and premises are situate on a rent or annual value of
fifteen pounds per annum at the least if situated in the Cities
of London or Westminster, or within any parish or place
within the Bills of Mortality, or within any city, Cinque
Port, town corporate, parish, or place the population of which
according to the last parliamentary census shall exceed ten
thousand, or within one mile, to be measured by the nearest
public street or path, from any polling place used at the last
election for any town having the like population, and return-
ing a member or members of Parliament ; nor shall any such
license be granted in respect of any dwelling house which
shall not, with the premises occupied therewith, be rated in
one sum to the rate for the relief of the poor of the parish,
township, or place in which such house and premises are
situate on a rent or annual value of eleven pounds per annum,
if situated within any city, Cinque Port, town corporate,
parish, or place, the population of which according to such
last parliamentary census shall exceed two thousand five

License to
retail beer
not to be
granted to
any but
the real
resident
occupier,
nor in
respect of
any house
rated at
less than
£15 per
annum
within the
bills of
mortality,
or in cities,
towns, etc.,
containing
10,000 in-
habitants ;

nor less
than
£11 per
annum in
places
exceeding
2500 in-
habitants ;

hundred and shall not exceed ten thousand, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of Parliament; nor shall any such license be granted in respect of any dwelling house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of eight pounds, if situated elsewhere than as aforesaid; and every license granted contrary hereto shall be null and void.¹

nor less than £8 per annum in places situated elsewhere.

2. *Person applying to be licensed to produce a certificate of his being the real resident occupier of the house and of the amount at which it is rated.*²

3. *Provision for new houses occupied since a rate made.*²

4. . . . In any extra-parochial or other place where no rates are made or collected for the relief of the poor it shall be lawful for the proper officers of excise authorised to grant licenses to grant a license to any person to retail beer or cider in a dwelling house, which, with the premises occupied therewith, shall be of the real rent or annual value of fifteen pounds, eleven pounds, or eight pounds respectively, according to the situation thereof as aforesaid . . .³

In extra-parochial places licenses may be granted on the certificate of two inhabitant householders of the required annual values.

5. *Penalty on overseers refusing to grant certificates, and on overseers and other persons granting false certificates.*²

6. *Penalty on forging certificates, or using false certificates; licenses so obtained void; persons obtaining them disqualified.*²

7. . . . Every person who shall hereafter be lawfully convicted of felony, or of selling spirits without license, shall for ever thereafter be disqualified from selling beer and cider by retail, and no license to sell beer and cider by retail under the said recited Acts or this Act shall be granted to any person who shall be so convicted as aforesaid; and if any

Licenses to be void on conviction of felony or of selling spirits without license.

¹ Preamble repealed 53 & 54 Vict. c. 51. As to "parish or place," see *Smith v. Redding*, L. R. 1 Q. B. 489.

² Repealed 32 & 33 Vict. c. 27, § 21.

³ Parts of this section now repealed by 53 & 54 Vict. c. 51, and 32 & 33 Vict. c. 27, § 21, relating to the certificate, etc., are omitted.

such person shall, after having been so convicted as aforesaid, take out or have any license to sell beer or cider by retail under the said recited Acts or this Act, the same shall be void to all intents and purposes, and every person who shall, after being convicted as aforesaid, sell any beer or cider by retail, in any manner whatsoever, shall incur the penalty for so doing without license, and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof.¹

On the death of a licensed person the executors or administrators, or the widow or child, may be authorised to sell for the remainder of the term of license.

8. . . . Upon the death of any person whatever licensed to retail beer or cider under the said recited Acts or this Act before the expiration of the license, it shall be lawful for the person authorised to grant licenses to authorise and empower, by endorsement or otherwise, as the Commissioners of Excise shall direct, the executors or administrators, or the widow or child of such deceased person, who shall be possessed of and occupy the dwelling house and premises before used for such purpose, to continue to retail beer and cider in the same house and premises during the residue of the term for which such license was originally granted, without taking out any fresh license, or payment of any additional duty thereon; and also at the expiration of such license (in case the residue of the said term shall be less than three calendar months from the death of the person licensed) to grant a new license to such executors, administrators, or widow, on payment of the proper license duty, *and entering into the usual bond.*²

Persons licensed to retail beer or cider to make entry with the excise.

7 & 8 Geo.
IV. c. 53.

4 & 5 Wm.
IV. c. 51.

9. . . . Every person whatever licensed to retail beer or cider under the said recited Act or this Act shall, in manner directed by an Act passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, intituled An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland, and by another Act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled An Act to

¹ Introductory words of this and subsequent sections repealed by 51 & 52 Vict. c. 57.

² Words in italics repealed 41 & 42 Vict. c. 79.

amend the Laws relating to the Collection and Management of the Revenue of Excise, make entry with the officers of excise of every house, cellar, room, and place for storing, keeping, or retailing beer or cider, on pain of forfeiting the penalties imposed by the said last-mentioned Act for making use of any unentered room or place; and all beer and cider found in any such unentered house, cellar, room, or place shall be forfeited.

10. *Penalty on persons licensed to sell beer, having wine, spirits, or sweets in their entered premises.*¹

11. . . . It shall be lawful for any officer of excise, at all times during the hours in which any house licensed for the retail of beer or cider may be kept open, to enter into every house, cellar, room, or place entered for the storing, keeping, or retailing of beer or cider, and to make search for and seize all wine and spirits and sweets which may be found in any such house, cellar, room, or place, and to examine all beer or cider kept therein.

Officers of excise empowered to enter the premises of licensed beer retailers;

12. . . . It shall be lawful for any officer of excise, during the hours which any house is kept open for the sale of beer after the rate of one penny halfpenny or after a less rate the quart, to enter into every such house, cellar, room, or place for the keeping or retailing such beer, and to make search for and seize all wines, spirits, sweets, and all beer which by law they are not entitled to sell.

and also the houses of persons selling beer at the rate of 1½d. or less the quart.

13. *Additional penalty on unlicensed persons selling beer or cider; to be sued for by a peace officer.*²

14. *Repeal of 11 Geo. IV. & 1 Wm. IV. c. 64, § 14, and 4 & 5 Wm. IV. c. 85 § 6.*³

15. *Hours for opening and closing houses.*⁴

16. *Justices may mitigate penalty.*²

17. *No person to forfeit his license for a first offence; and no license to be void unless so adjudged.*²

¹ Repealed L. A. 1872; see now § 10 of that Act.

² Repealed L. A. 1872.

³ Repealed 37 & 38 Vict. c. 96.

⁴ Repealed L. A. 1872; see now L. A. 1874, § 3.

Licenses may be granted to persons licensed before the passing of the Act whilst they continue the occupiers of the same house, although it is below the qualification.

18. Provided always . . . that nothing in this Act contained shall prevent any person from obtaining, at the expiration of his existing license, a renewed license in respect of any house in which he shall at the time of the passing of this Act be duly licensed to retail beer or cider under the said recited Acts or either of them, notwithstanding such house may not be of the rent or annual value by this Act prescribed; *nor to oblige such person to produce any other certificate (where a certificate is required) for obtaining his license than the certificate required by the said recited Acts*; but it shall be lawful for the officers of excise duly authorised to grant licenses to renew and continue to grant licenses to such person (being in other respects properly qualified), *on the production of such certificate as last aforesaid*, so long as such person shall continue to be the resident holder and occupier of the same house, anything in this Act to the contrary notwithstanding.¹

19. *Penalties under this Act, where not otherwise directed, to be recovered under the provisions of the former Acts.*²

Recited Acts to continue in force, except as hereby altered.

20. . . . All the provisions of the said two recited Acts shall be deemed and taken to be in full force and applicable to this Act, save and except where the provisions of the said first-recited Act are altered by the provisions of the said secondly recited Act, or where the provisions of either of the said two Acts are altered by this Act; and that so much of the said first-recited Act as relates to the interpretation of certain words therein mentioned shall be applied to the interpretation of the same words where used in this Act.

Interpretation of words.

Powers, provisions, and penalties of 11 Geo. IV., & 1 Wm. IV. c. 64, and 4 & 5 Wm. IV. c. 85, to apply to persons licensed under this Act.

21. . . . All the powers, regulations, proceedings, forms, penalties, forfeitures, enactments, and provisions contained in the said recited Acts, or in either of them, with reference to persons licensed under either of the said Acts, and to the offences committed by such persons against either of the said Acts, or against the tenor of any license granted under the said Acts, and also with reference to the sureties of such persons, and to persons doing the things thereby prohibited without the license required by the said Acts or either of

¹ Words in italics repealed 37 & 38 Vict. c. 96.

² Repealed L. A. 1872.

them, shall (except where they are altered by this Act, or are repugnant thereto) be deemed and taken to be applicable to all persons licensed under this Act, and to all offences committed by such persons of the same description as the offences mentioned in the said Acts, and to the sureties of all such persons in respect of such offences, and to all persons doing, without the license required by the Act, things of the same description as the things prohibited without the license required by the said recited Acts, as fully and effectually as if all the said powers, regulations, proceedings, forms, penalties, forfeitures, enactments, and provisions had been repeated and re-enacted in this Act with reference to persons licensed under this Act, and to the sureties of such persons, and to persons acting without the license required by this Act; and also that all the powers, regulations, and provisions in the said Acts contained, authorising any party convicted to appeal to the general session or quarter sessions of the peace against any conviction under the said Acts, shall also extend and apply to any convictions under this Act.¹

22. Provided always . . . that nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of *Oxford* or *Cambridge*, or any of the powers and authorities vested by charter or otherwise in the chancellors, masters, and scholars of the said Universities, and their successors, or in the master, wardens, freemen, and commonalty of the Vintners of the City of *London*; but not to extend to those freemen of the said company of Vintners who have obtained the same by redemption only.²

Act not to affect the two Universities.

23. *Act may be altered this Session.*³

¹ Repealed so far as incorporating repealed enactments, L. A. 1872.

² See *supra*, Section XII., p. 70; also 6 Geo. IV. c. 81, § 30; 9 Geo. IV. c. 61, § 36; 1 Wm. IV. c. 64, § 29; 5 & 6 Vict. c. 44, § 6; 32 & 33 Vict. c. 27, § 20; L. A. 1872, § 72; 43 & 44 Vict. c. 20, § 48.

³ Repealed 37 & 38 Vict. c. 96.

THE LICENSING ACT, 1842.

(5 & 6 VICT. c. 44.)

An Act for the Transfer of Licenses and Regulation of Public Houses. [1st July, 1842.]

Empower-
ing transfer
of licenses
by justices
at petty
sessions.

9 Geo. IV.
c. 61.

Whereas it is expedient that greater facilities should be given in the transfer of licenses of inns, alehouses, and victualling houses, and likewise that some regulations should be made and for restraining the sale of spirituous liquors on board boats or other vessels at anchor in the river Thames: Be it therefore enacted, etc., that at any petty sessions of justices of the peace holden in and for any division of every county and riding, and in any hundred of every county not being within such division, and in every liberty, city, town, or place within which any inn, alehouse, or victualling house shall be situated, and for which the said justices shall be acting, at any time when no special session shall be holden for any such division, hundred, liberty, city, town, or place, it shall be lawful, in those cases where justices of the peace assembled at a special session are empowered, by an Act passed in the ninth year of the reign of King George the Fourth, intituled An Act to regulate the Granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England, to transfer or grant licenses, before the expiration thereof, to sell exciseable liquors by retail in the same house or premises in respect of which any person had been theretofore duly licensed, for the majority of the justices then present, upon application made to them at any such petty session, by endorsement under their hands and seals on any license which shall have been granted pursuant to the provisions of the said Act at any general licensing meeting, or at any adjournment thereof, to authorise (if they shall deem it proper so to do, after examining upon oath all necessary parties), any person not disqualified by the said Act, to whom it shall be proposed at the time of such application to transfer or grant any such license, to use, exercise, and carry on the business of a licensed victualler at the same house and on the same premises, and there to sell such exciseable liquors as might theretofore have been lawfully sold and retailed therein;

and thereupon it shall be lawful for the officer of excise empowered to transfer licenses by indorsement on the excise licenses required to be transferred to give the like authority to the persons so authorised by the magistrate or justices; and the authority so granted shall continue and be in force until the then next ensuing special session which shall be holden for the division, hundred, liberty, city, town, or place within which such house and premises shall be situated, and no longer; at which special session the justices then and there assembled, upon application made to them pursuant to the said Act, touching any transfer or grant of license to the party or parties to whom such authority shall have been so given at petty sessions as aforesaid, shall hear and dispose of such application according to the provisions of the said Act: provided always, that nothing herein contained shall be construed to empower any justices at petty sessions to give any such authority as aforesaid within any of the divisions assigned or to be assigned to any of the police courts already established or to be established within the metropolitan police district, except in the borough of Southwark; but that any such application as is herein-before directed to be made at petty sessions shall, when the house and premises in respect whereof any license shall have been obtained under the said Act shall be situated within any of the said police court divisions, and not in the borough of Southwark, be made to one of the police magistrates sitting at any of the said courts, and such magistrate shall in his discretion grant such authority in the manner and for the time herein-after mentioned: provided also, that any person or persons who shall be authorised, under the provisions of this Act, to continue to carry on the business of a licensed victualler, shall, after the obtaining such authority, and so long as the same shall continue in force, be subject to all the powers, regulations, proceedings, penalties, and provisions declared by or contained in any Act or Acts in force touching the regulation, government, or control of licensed keepers of inns, alehouses, and victualling houses, in like manner as if the same had been repealed and re-enacted, and that all penalties and forfeitures imposed by any such act or acts shall be applied as directed by the same respectively.¹

Proviso as
to the metro-
politan
police
district.

¹ Preamble repealed, 53 & 54 Vict. 51.

When

licenses are
lost a copy
may be in-
dorsed and
considered
valid.

2. And be it enacted, that whenever it shall be proved to the satisfaction of any such magistrate or justices at petty session, upon an application made as aforesaid, that any license granted pursuant to the said Act passed in the ninth year of the reign of King George the Fourth has been lost or mislaid [or if the application is for the grant or transfer of a license, has been wilfully withheld by the holder thereof], it shall and may be lawful for the said magistrate or justices to receive a copy of such license, certified to be a true copy under the hand of the clerk to the licensing justices by whom the said license shall have been granted, and to make such indorsement thereon as he or they might make under the provisions of this Act upon the original license; and such indorsement upon the copy so certified shall be as valid and effectual as if the same had been made upon the said license.¹

Fee for
indorsing
the copy.

3. And be it enacted, that for every such certified copy and every such indorsement a fee of two shillings and sixpence, and no more, shall and may be demanded and taken.

4. *Disqualified justices not to act at petty sessions.*²

No wines,
etc., to be
sold on
board any
boats or
vessels
moored or
lying at
anchor
during the
time when
prohibited
to be sold
in public-
houses.

5. And be it enacted, that no wines, spirits, or other exciseable liquors shall be sold by retail on board of any boat, steam boat, or other vessel which shall be moored or lying at anchor within the metropolitan police district, during the hours and times on Sundays, Good Friday, and Christmas Day on which licensed victuallers are by law obliged to keep their houses closed; and any master, steward, mistress or stewardess, or any other person on board any such boat, steam boat, or other vessel, who shall during those hours, on Sundays, Good Friday, and Christmas Day, in which the houses of licensed victuallers shall be closed, sell any wines, spirits, or other exciseable liquors, in and on board such boat, steam boat, or other vessel, within the said district, shall be liable to a penalty not exceeding five pounds, which may be recovered before any magistrate of the metropolitan police courts, or if the offence shall be committed beyond the limits

¹ Words in brackets inserted in this section by L. A. 1872, § 41, and 47/48 Vict. c. 29, § 1.

² Repealed 37 & 38 Vict. c. 96; see now L. A. 1872, § 60.

of any metropolitan police court established or to be established, before any two justices of the peace having jurisdiction therein, or shall, in the discretion of the magistrate or justices of the peace before whom the conviction shall take place, be imprisoned for any time not longer than one calendar month in any gaol or house of correction within his jurisdiction; and in every case of the adjudication of such pecuniary penalty and nonpayment thereof, it shall be lawful for such magistrate or justices of the peace to commit the offender to such gaol or house of correction for a term not exceeding one calendar month, the imprisonment to cease on payment of the sum due; and such penalty shall be paid to the receiver of the metropolitan police, and be applied by him towards the expenses of the police courts established within the said district.

6. Provided always, and be it enacted, that nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or the powers of the chancellors or vice chancellors of the same, as by law possessed under the respective charters of the said Universities or otherwise.¹

Act not to extend to Universities of Oxford and Cambridge.

THE THEATRES ACT, 1843.

(6 & 7 VICT. c. 68.)

*An Act for regulating Theatres.*²

[22nd August, 1843.]

Whereas it is expedient that the laws now in force for regulating theatres and theatrical performances be repealed, and other provisions be enacted in their stead: Be it enacted, etc.

Repeal of 3 Jac. I. c. 21. Part of 10 Geo. II. c. 19; 10 Geo. II. c. 28; 28 Geo. III. c. 30.

2. It shall not be lawful for any person to have or keep any house or other place of public resort in Great Britain, for the public performance of stage plays, without authority by virtue of letters patent from her Majesty, her heirs and

¹ See *ante*, p. 278, note 2.

² Of this Act, §§ 1, 18, 25 are repealed by 37 & 38 Vict. c. 96.

All theatres for the performance of plays must be licensed.

successors, or predecessors, or without license from the Lord Chamberlain of her Majesty's household for the time being, or from the justices of the peace as hereinafter provided; and every person who shall offend against this enactment shall be liable to forfeit such sum as shall be awarded by the court in which or the justices by whom he shall be convicted, not exceeding twenty pounds for every day on which such house or place shall have been so kept open by him for the purpose aforesaid, without legal authority.¹

What licenses shall be granted by the Lord Chamberlain.

3. And be it enacted, that the authority of the Lord Chamberlain for granting licenses shall extend to all theatres (not being patent theatres) within the parliamentary boundaries of the cities of London and Westminster, and of the boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth, and Southwark, and also within those places where her Majesty, her heirs and successors, shall, in their royal persons, occasionally reside: provided always, that, except within the cities and boroughs aforesaid, and the boroughs of New Windsor in the county of Berks, and Brighthelmstone in the county of Sussex, licenses for theatres may be granted by the justices as hereinafter provided, in those places in which her Majesty, her heirs and successors, shall occasionally reside; but such licenses shall not be in force during the residence there of her Majesty, her heirs and successors; and during such residence it shall not be lawful to open such theatres as last aforesaid (not being patent theatres) without the license of the Lord Chamberlain.

Fee for Lord Chamberlain's license.

4. And be it enacted, that for every such license granted by the Lord Chamberlain a fee, not exceeding ten shillings for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the Lord Chamberlain, shall be paid to the Lord Chamberlain.

Licenses may be granted by justices.

5. And be it enacted, that the justices of the peace within every county, riding, division, liberty, cinque port, city and borough in Great Britain beyond the limits of the authority of the Lord Chamberlain, in which application shall

¹ The jurisdiction of the justices over the licensing of theatres is now vested in the County Council. See 51 & 52 Vict. c. 41, §§ 7, 8.

have been made to them for any such license as is herein-after mentioned, shall, within twenty-one days next after such application shall have been made to them in writing signed by the party making the same, and countersigned by at least two justices acting in and for the division within which the property proposed to be licensed shall be situate, and delivered to the clerk to the said justices, hold a special session in the division, district, or place for which they usually act, for granting licenses to houses for the performance of stage plays, of the holding of which session seven days' notice shall be given by their clerk to each of the justices acting within such division, district, or place; and every such license shall be given under the hands and seals of four or more of the justices assembled at such special session, and shall be signed and sealed in open court, and afterwards shall be publicly read by the clerk, with the names of the justices subscribing the same.

6. And be it enacted, that for every such license granted by the justices a fee, not exceeding five shillings for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the justices, shall be paid to the clerk of the said justices. Fee for justices' license.

7. And be it enacted, that no such license for a theatre shall be granted by the Lord Chamberlain or justices to any person except the actual and responsible manager for the time being of the theatre in respect of which the license shall be granted; and the name and place of abode of such manager shall be printed on every play bill announcing any representation at such theatre; and such manager shall become bound himself in such penal sum as the Lord Chamberlain or justices shall require, being in no case more than five hundred pounds, and two sufficient sureties, to be approved by the said Lord Chamberlain or justices, each in such penal sum as the Lord Chamberlain or justices shall require, being in no case more than one hundred pounds, for the due observance of the rules which shall be in force at any time during the currency of the license for the regulation of such theatre, and for securing payment of the penalties which such manager may be adjudged to pay for breach of the said rules, or any of the provisions of this Act. To whom licenses shall be granted.

Rules for
the
theatres
under the
control of
the Lord
Chamber-
lain.

8. And be it enacted, that in case it shall appear to the Lord Chamberlain that any riot or misbehaviour has taken place in any theatre licensed by him, or in any patent theatre, it shall be lawful for him to suspend such license or to order such patent theatre to be closed for such time as to him shall seem fit; and it shall also be lawful for the Lord Chamberlain to order that any patent theatre or any theatre licensed by him shall be closed on such public occasions as to the Lord Chamberlain shall seem fit; and while any such license shall be suspended, or any such order shall be in force, the theatre to which the same applies shall not be entitled to the privilege of any letters patent or license, but shall be deemed an unlicensed house.

Rules for
enforcing
order in
the
theatres
licensed
by the
justices.

9. And be it enacted, that the said justices of the peace at a special licensing session or at some adjournment thereof, shall make suitable rules for ensuring order and decency at the several theatres licensed by them within their jurisdiction, and for regulating the times during which they shall severally be allowed to be open, and from time to time, at another special session, of which notice shall be given as aforesaid, may rescind or alter such rules; and it shall be lawful for any one of Her Majesty's Principal Secretaries of State to rescind or alter any such rules, and also to make such other rules for the like purpose, as to him shall seem fit; and a copy of all rules which shall be in force for the time being shall be annexed to every such license; and in case any riot or breach of the said rules in any such theatre shall be proved on oath before any two justices usually acting in the jurisdiction where such theatre is situated, it shall be lawful for them to order that the same be closed for such time as to the said justices shall seem fit; and while such order shall be in force the theatre so ordered to be closed shall be deemed an unlicensed house.

Proviso for
the Uni-
versities of
Oxford and
Cambridge.

10. Provided always, and be it enacted, that no such license shall be in force within the precincts of either of the Universities of Oxford or Cambridge, or within fourteen miles of the city of Oxford or town of Cambridge, without the consent of the Chancellor or Vice Chancellor of each of the said Universities respectively; and that the rules for the management of any theatre which shall be licensed with such

consent within the limits aforesaid shall be subject to the approval of the said Chancellor or Vice Chancellor respectively; and in case of the breach of any of the said rules, or of any condition on which the consent of the Chancellor or Vice Chancellor to grant any such license shall have been given, it shall be lawful for such Chancellor or Vice Chancellor respectively to annul the license, and thereupon such license shall become void.

11. And be it enacted, that every person who for hire shall act or present, or cause, permit, or suffer to be acted or presented, any part in any stage play, in any place not being a patent theatre or duly licensed as a theatre, shall forfeit such sum as shall be awarded by the court in which or the justices by whom he shall be convicted, not exceeding ten pounds for every day on which he shall so offend.¹

Penalty on persons performing in unlicensed places.

12. And be it enacted, that one copy of every new stage play, and of every new act, scene, or other part added to any old stage play, and of every new prologue or epilogue, and of every new part added to an old prologue or epilogue intended to be produced and acted for hire at any theatre in Great Britain, shall be sent to the Lord Chamberlain of her Majesty's household for the time being, seven days at least before the first acting or presenting thereof, with an account of the theatre where and the time when the same is intended to be first acted or presented, signed by the master or manager, or one of the masters or managers, of such theatre; and during the said seven days no person shall for hire act or present the same, or cause the same to be acted or presented; and in case the Lord Chamberlain, either before or after the expiration of the said period of seven days, shall disallow any play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, it shall not be lawful for any person to act or present the same, or cause the same to be acted or presented, contrary to such disallowance.

No new plays or additions to old ones to be acted until submitted to the Lord Chamberlain.

13. And be it enacted, that it shall be lawful for the Lord Chamberlain to charge such fees for examination of the plays, prologues, and epilogues, or parts thereof, which

Fees to be paid for examination of plays, etc.

¹ As to entering unlicensed places in the Metropolitan districts and arresting persons found therein, see 2 & 3 Vict. c. 47, § 46, ante.

shall be sent to him for examination, as to him from time to time shall seem fit, according to a scale which shall be fixed by him, such fee not being in any case more than two guineas, and such fees shall be paid at the time when such plays, prologues, and epilogues, or parts thereof, shall be sent to the Lord Chamberlain; and the said period of seven days shall not begin to run in any case until the said fee shall have been paid to the Lord Chamberlain, or to some officer deputed by him to receive the same.

The Lord Chamberlain may forbid any play.

14. And be it enacted, that it shall be lawful for the Lord Chamberlain for the time being, whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do, to forbid the acting or presenting any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, anywhere in Great Britain, or in such theatres as he shall specify, and either absolutely or for such time as he shall think fit.

Penalty for acting plays before they are allowed or after they have been disallowed.

15. And be it enacted, that every person who for hire shall act or present, or cause to be acted or presented, any new stage play, or any act, scene, or part thereof, or any new prologue or epilogue, or any part thereof, until the same shall have been allowed by the Lord Chamberlain, or which shall have been disallowed by him, and also every person who for hire shall act or present, or cause to be acted or presented, any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, contrary to such prohibition as aforesaid, shall for every such offence forfeit such sum as shall be awarded by the Court in which or the justices by whom he shall be convicted, not exceeding the sum of fifty pounds; and every license (in case there be any such) by or under which the theatre was opened, in which such offence shall have been committed, shall become absolutely void.

What shall be evidence of acting for hire.

16. And be it enacted, that in every case in which any money or other reward shall be taken or charged, directly or indirectly, or in which the purchase of any article is made a condition for the admission of any person into any theatre to see any stage play, and also in every case in

which any stage play shall be acted or presented in any house, room, or place in which distilled or fermented excisable liquor shall be sold, every actor therein shall be deemed to be acting for hire.

17. And be it enacted, that in any proceedings to be instituted against any person for having or keeping an unlicensed theatre, or for acting for hire in an unlicensed theatre, if it shall be proved that such theatre is used for the public performance of stage plays, the burden of proof that such theatre is duly licensed or authorised shall lie on the party accused, and until the contrary shall be proved such theatre shall be taken to be unlicensed.

Proof of license in certain cases to lie on the party accused.

19. And be it enacted, that all the pecuniary penalties imposed by this Act for offences committed in England may be recovered in any of her Majesty's Courts of Record at Westminster, and for offences committed in Scotland by action or summary complaint before the Court of Session or Justiciary there, or for offences committed in any part of Great Britain in a summary way before two justices of the peace for any county, riding, division, liberty, city, or borough where any such offence shall be committed.¹

Penalties how to be recoverable.

20. And be it enacted, that it shall be lawful for any person who shall think himself aggrieved by any order of such justices of the peace to appeal therefrom to the next General or Quarter Session of the peace to be holden for the said county, riding, division, liberty, city, or borough, whose order therein shall be final.

Appeal.

21. And be it enacted, that the said penalties for any offence against this Act shall be paid and applied in the first instance toward defraying the expenses incurred by the prosecutor, and the residue thereof (if any) shall be paid to the use of her Majesty, her heirs and successors.

Appropriation of penalties.

22. Provided always, and be it enacted, that no person shall be liable to be prosecuted for any offence against this Act unless such prosecution shall be commenced within six calendar months after the offence committed.

Limitation of actions.

¹ Part of this section as to enforcing payment of penalties and costs now repealed (by 55 & 56 Vict. c. 19) is omitted.

Interpre-
tation of
Act.

23. And be it enacted, that in this Act the word "stage play" shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof: provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which by the justices of the peace, or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind.

Limits of
the Act.

24. And be it enacted, that this Act shall extend only to Great Britain.

THE COUNTY RATES ACT, 1844.

(7 & 8 VICT. c. 33.)

An Act for facilitating the Collection of County Rates, and for relieving High Constables from Attendance at Quarter Sessions in certain Cases, and from certain other Duties.

[19th July, 1844.]

Where
special
sessions are
required to
be holden
notice of
the same
to be sent
to each
justice.

7. In all cases in which special sessions are required to be holden for any division of any county or place, if notice of the intended holding of such special sessions be signed by any one justice of the peace usually acting within such division, and if a copy of such notice be sent by post a reasonable time before the day on which such sessions are to be holden, addressed to each justice of the peace resident and usually acting within such division at his residence in such division, such notice shall be deemed to have been duly given to or served on each such justice of the peace, any law or custom to the contrary notwithstanding.

THE GAMING ACT, 1845.

(8 & 9 VICT. c. 109.)

*An Act to amend the law concerning Games and Wagers.*¹

[8th August, 1845.]

2. And whereas doubts have arisen whether certain houses, alleged or reputed to be opened for the use of the subscribers only, or not open to all persons desirous of using the same, are to be deemed common gaming houses: be it declared and enacted, that in default of other evidence proving any house or place to be a common gaming house, it shall be sufficient, in support of the allegation in any indictment or information that any house or place is a common gaming house, to prove that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; and every such house or place shall be deemed a common gaming house such as is contrary to law, and forbidden to be kept by the said Act of King Henry the Eighth, and by all other Acts containing any provision against unlawful games or gaming houses.

What shall
be sufficient
evidence
that a
house is a
common
gaming
house.

3. And be it enacted, that in every case (except within the metropolitan police district) in which the justices of peace in every shire, and mayors, sheriffs, bailiffs, and other head officers within every city, town, and borough, within this realm, now have by law authority to enter into any house, room, or place where unlawful games shall be suspected to be holden, it shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, room, or place to be kept or used as a common gaming house, to give authority, by special warrant under his hand, when in his discretion he shall think fit, to any constable to enter, with such assistance

Power of
justices
may be
exercised
under
warrant.

¹ Of this Act, §§ 1, 15, 16, 26, are repealed by 38 & 39 Vict. c. 66; § 19 by 55 & 56 Vict. c. 19; and §§ 22, 23 by 57 & 58 Vict. c. 56.

as may be found necessary, into such house, room, or place, in like manner as might have been done by such justices, mayors, sheriffs, bailiffs, or other head officers, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of peace all such persons found therein as might have been arrested therein by such justice of peace had he been personally present; and all such persons shall be dealt with according to law, as if they had been arrested in such house, room, or place by the justice before whom they shall be so brought; and any such warrant may be in the form given in the first schedule annexed to this Act.

Penalties
on gaming
house
keepers,
etc.

4. And be it enacted, that the owner or keeper of any common gaming house, and every person having the care or management thereof, and also every banker, croupier, and other person who shall act in any manner in conducting the business of any common gaming house, shall, on conviction thereof, by his own confession, or by the oath of one or more credible witnesses, before any two justices of the peace, besides any penalty or punishment to which he may be liable under the provisions of the said Act of King Henry the Eighth, be liable to forfeit and pay such penalty, not more than one hundred pounds, as shall be adjudged by the justices before whom he shall be convicted, or, in the discretion of the justices before whom he shall be convicted, may be committed to the house of correction, with or without hard labour, for any time not more than six calendar months; and on nonpayment of any penalty so adjudged, and of the reasonable costs and charges attending the conviction, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of one of the convicting justices: Provided always, that nothing herein contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of a common gaming house; but no person who shall have been summarily convicted of any such offence shall be liable to be proceeded against by indictment for the same offence.

Proof of gaming for support of any information for gaming in, or suffering any

games or gaming in, or for keeping or using, or being concerned in the management or conduct of a common gaming house, to prove that any person found playing at any game was playing for any money, wager, or stake.

money,
etc., not
necessary
in support
of infor-
mations for
gaming.

6. And be it enacted, that if any superintendent belonging to the metropolitan police force shall report in writing to the commissioners of police of the metropolis that there are good grounds for believing, and that he does believe, that any house, room, or place within the metropolitan police district is kept or used as a common gaming house, it shall be lawful for either of the said commissioners, by order in writing to authorise the superintendent to enter any such house, room, or place, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize all tables and instruments of gaming found in such house or premises, and also to seize all moneys and securities for money found therein.

Commis-
sioners of
police may
authorise
super-
intendent
and con-
stables to
enter
gaming
houses and
seize all
instru-
ments of
gaming and
take into
custody all
persons
found
therein.

7. And be it enacted, that it shall be lawful for the police superintendent making such entry as aforesaid in obedience to any such order of one of the commissioners of police of the metropolis, with the assistance of any constable or constables accompanying him, to search all parts of the house, room, or place which he shall have so entered where he shall suspect that tables or instruments of gaming are concealed, and all persons whom he shall find therein, and to seize all tables and instruments of gaming which he shall so find.

Police
super-
intendent
may search
for instru-
ments of
gaming.

8. And be it enacted, that where any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game shall be found in any house, room, or place suspected to be used as a common gaming house, and entered under a warrant or order issued under the provisions of this Act, or about the person of any of those who shall be found therein, it shall be evidence, until the contrary be made to appear, that such house, room, or place is used as a common gaming house, and that the persons found

What shall
be deemed
evidence
of gaming.

in the room or place where such tables or instruments of gaming shall have been found were playing therein, although no play was actually going on in the presence of the superintendent or constable entering the same, under a warrant or order issued under the provisions of this Act, or in the presence of those persons by whom he shall be accompanied as aforesaid; and it shall be lawful for the police magistrate or justices before whom any person shall be taken by virtue of the warrant or order to direct all such tables and instruments of gaming to be forthwith destroyed.

Indemnity
of wit-
nesses.

9. And for the more effectual prosecution of the keepers of common gaming houses, be it enacted, that every person who shall have been concerned in any unlawful gaming, and who shall be examined as a witness by or before any police magistrate or justice of the peace, or on the trial of any indictment or information against the owner or keeper or other person having the care or management of any common gaming house, touching such unlawful gaming, and who upon such examination shall make true and faithful discovery to the best of his or her knowledge of all things as to which he or she shall be so examined, and shall thereupon receive from the magistrate or justice of the peace or judge of the Court by or before whom he or she shall be so examined a certificate in writing to that effect, shall be freed from all criminal prosecutions, and from all forfeitures, punishments, and disabilities, to which he or she may have become liable for anything done before that time in respect of such unlawful gaming.

Justices
may grant
billiard
licenses at
licensing
sessions.

10. And be it enacted, that the justices in every division, district, and place in England for which a special session of the justices of the peace (called the general annual licensing meeting) is holden annually for granting licenses to persons keeping or being about to keep inns, alehouses, and victualling houses to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified, shall have authority at such general annual licensing meeting, or at any adjournment thereof, to grant billiard licenses to such persons as the said justices shall in their discretion deem fit and proper to keep public billiard tables and bagatelle boards or instruments used in any game of the like

kind, and at the special sessions holden for transferring licenses to keep inns shall have authority to transfer such billiard licenses to such other persons as they in their discretion shall deem fit and proper to continue to hold the same, and who in each case shall *be required to give the like notice of their intention to apply for such billiard license, and* entitled to receive the like notice of the licensing days as is required in the case of persons intending to apply for a license or the transfer of a license to sell exciseable liquors by retail to be drunk or consumed on the premises, or as near thereto as the case will allow; and every such billiard license shall be in the form given in the third schedule annexed to this Act, and shall continue in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and the clerk of the justices shall be entitled to demand and receive from every person licensed under this Act, for the petty constable or other peace officer, for serving notices and other services required of him, the sum of one shilling, and for the clerk of the justices, for the license, the sum of five shillings; and every clerk who shall demand or receive from any person for such fees more than the said sums, being together six shillings, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds.¹

11. And be it enacted, that after the fifth day of April in the year one thousand eight hundred and forty-six, in the Counties of Middlesex and Surrey, and elsewhere after the tenth day of October next after the passing of this Act, every house, room, or place kept for public billiard playing, or where a public billiard table or bagatelle board, or instrument used in any game of the like kind, is kept, at which persons are admitted to play, except in houses or premises specified in any license granted under an Act passed in the ninth year of the reign of King George the Fourth, intituled An Act to 9 G. 4, c. 61. regulate the granting of Licenses to Keepers of Inns, Ale-houses, and Victualling Houses in England, herein-after called

Places kept
for public
billiard
tables to
be licensed.

¹ The part of this section in italics was repealed by 38 & 39 Vict. c. 66. See, also, 9 Geo. IV. c. 61, §§ 1-4, 14; and as to notices now required, see L. A. 1872, § 75.

Notice that such places are licensed for billiards to be put up. a victualler's license, shall be licensed under this Act; and after the said fifth day of April in Middlesex and Surrey, and elsewhere after the said tenth day of October, every person keeping any such public billiard table or bagatelle board or instrument used in any game of the like kind for public use, without being duly licensed so to do, and not holding a victualler's license for the house or premises where such billiard table, bagatelle board, or other instrument as aforesaid is kept or used, and also every person licensed under this Act who shall not during the continuance of such billiard license put and keep up the words "Licensed for Billiards," legibly printed in some conspicuous place near the door and on the outside of the house specified in the license, shall be liable to be proceeded against as the keeper of a common gaming house, and, beside any penalty or punishment to which he may be liable if convicted of keeping a common gaming house, shall, on conviction of keeping such unlicensed billiard table, bagatelle board, or other instrument as aforesaid, by his own confession, or by the oath of one or more credible witnesses before any police magistrate or any two justices of the peace, be liable to pay such penalty, not more than ten pounds for every day on which such billiard table, bagatelle board, or instrument as aforesaid shall be used, as shall be adjudged by the magistrate or justices before whom he shall be convicted, or, in the discretion of the magistrate or justices, may be committed to the house of correction with or without hard labour for any time not more than one calendar month; *and on nonpayment of any penalty so adjudged, and of the reasonable costs and charges of the conviction, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of the magistrate or one of the convicting justices; but no person who shall have been summarily convicted of any such offence shall be liable to be further proceeded against by indictment for the same offence.*¹

Penalties
for offences
against
tenor of
licenses.

12. And be it enacted, that every person licensed under this Act who shall be convicted before a police magistrate or two justices acting in and for the division or place in which

¹ The part of this section in italics was repealed by the S. J. Act, 1884 (47 & 48 Vict. c. 43).

shall be situated the house kept or theretofore kept by such person of any offence against the tenor of the license to him granted, shall be liable to the same penalties and punishments in the case of a first, second, or third offence respectively to which persons licensed under an Act passed in the ninth year of the reign of King George the Fourth, intituled An ^{9 Geo. IV. c. 61.} Act to regulate the granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England, are respectively liable on conviction of a first, second, or third offence against the tenor of the license granted to them under the last-recited Act, or as near thereunto as the nature of the case will allow; and all the provisions of the last-recited Act with respect to convictions and penalties for offences against the last-recited Act, and the proceedings for enforcing the same, and to the expenses of prosecution and penalties on witnesses for not attending, and the recovery and application of penalties, and the proceedings on appeals against convictions, and the award of costs on appeals, and in actions against justices, constables, or other persons for anything done in execution of the last-recited Act, shall be deemed to apply, so far as they are applicable, to convictions for offences against the tenor of the licenses granted under this Act, and to the proceedings consequent thereupon or connected therewith, as if they were herein re-enacted.¹

13. And be it enacted, that every person keeping any public billiard table or bagatelle board, or instrument used in any game of the like kind, whether he be the holder of a victualler's license or licensed under this Act, who shall ^{When billiard playing shall not be allowed.} allow any person to play at such table, board, or instrument after one and before eight of the clock in the morning of any day, or at any time on Sundays, Christmas Day, or Good Friday, or any day appointed to be kept as a public fast or thanksgiving; and every person holding a victualler's license who shall allow any person to play at such table, board, or instrument kept on the premises specified in such victualler's license at any time when such premises are not by law allowed to be open for the sale of wine, spirits, or beer, or other fermented or distilled liquors, shall be liable to the penalties herein provided in the case of persons keeping such public

¹ See now L. A. 1872, § 75.

billiard table, bagatelle board, or instrument as aforesaid for public use without license; and during those times when play at such table, board, or instrument is not allowed by this Act every house licensed under this Act, and every billiard room in every house specified in any victualler's license, shall be closed, and the keeping of the same open, or allowing any person to play therein or thereat, at any of the times or on any of the days during which such play is not allowed by this Act, shall be deemed in each case an offence against the tenor of the licence of the person so offending.¹

Empower-
ing con-
stables to
visit
licensed
houses.

14. And be it enacted, that it shall be lawful for all constables and officers of police to enter into any house, room, or place where any public table or board is kept for playing at billiards, bagatelle, or any game of the like kind, when and so often as such constables and officers shall think proper; and every person licensed under the said Act of the ninth year of the reign of King George the Fourth, or under this Act, who shall refuse to admit or who shall not admit any such constable or officer of police into such house, room, or place shall, on conviction thereof before a police magistrate or any two justices of the peace, be deemed guilty of an offence against the tenor of his license, whether the same be a billiard license or a victualler's license, *and in the case of a first, second, third, or subsequent offence shall be punished accordingly.*²

17. Cheating at play to be punished as obtaining money by false pretences.

18. Wagers not recoverable at law.³

Appeal to
Quarter
Sessions.

20. And be it enacted, that any person who shall be summarily convicted under this Act may appeal to the next General or Quarter Session of the peace; and it shall be lawful for the magistrate or justices by whom such conviction shall have been made to bind over the witnesses who shall have been examined in sufficient recognizances to attend and

¹ See L. A. 1874, § 3.

² Words in italics repealed, 38 & 39 Vict. c. 66.

³ Extended by Gaming Act, 1892 (55 Vict. c. 9).

be examined at the hearing of such appeal; and that every such witness on producing a certificate of being so bound, under the hand of the said magistrate or justices, shall be allowed compensation for his or her time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county or place, in like manner as in cases of misdemeanor, under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, intituled An Act for improving the Administration of Criminal Justice in England, and in case the appeal shall be dismissed, and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the Court, shall be repaid to the said treasurer by the appellant.¹

7 Geo. IV.
c. 64.

21. Distress not unlawful for want of form.

24. Construction of terms (Ireland).

25. And be it enacted, that no information, conviction, or other proceeding before or by any justice or justices under this Act shall be quashed or set aside, or adjudged void or insufficient, for want of form, or be removed by certiorari into her Majesty's Court of Queen's Bench.

Conviction,
etc., not to
be quashed
for inform-
ality, etc.

THE FIRST SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

Form of Warrant.

County of } TO the Constable

Whereas it appears to me, *J.P.*, one of the justices of our Lady the Queen, assigned to keep the peace in the said county, by the information on oath of *A.B.*, of _____, in the county of _____, yeoman, that the house [room or place] known as [here insert a description of the house, room, or place by which it may be readily known and found], is kept and used as a common gaming house within the meaning of an Act passed in the _____ year

¹ Some words repealed by the S. J. Act, 1884 (47 & 48 Vict. c. 43) are omitted.

of the reign of her Majesty Queen Victoria, intituled [here insert the Title of this Act]:

This is, therefore, in the name of our Lady the Queen, to require you, with such assistants as you may find necessary, to enter into the said house [room or place], and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and there diligently to search for all instruments of unlawful gaming which may be therein, and to arrest, search, and bring before me, or some other of the justices of our Lady the Queen assigned to keep the peace within the county of _____, as well the keepers of the same as also the persons there haunting, resorting, and playing, to be dealt with according to law; and for so doing this shall be your warrant.

J.P. (L.S.)

Given under my hand and seal at _____, in the
county of _____, this _____ day
of _____, in the _____ year of the
reign of _____.

Second Schedule.¹

THE THIRD SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

Form of License.

At the general annual licensing meeting [or an adjournment of the general annual licensing meeting, or at a special petty session] of her Majesty's justices of the peace acting for the division [or liberty, etc., as the case may be], of _____, in the county of _____, holden at _____, on the _____ day of _____, in the year _____, for the purpose of granting billiard licenses, we being _____ of her Majesty's justices of the peace acting for the said county [or liberty, etc., as the case may be], and being the majority of those assembled at the said session, do hereby authorise and empower A.L., now dwelling at _____, in the parish of _____, to keep a house for public billiard playing at [here specify the house], provided that he [or she] put and keep up the words "Licensed for Billiards" legibly printed in some conspicuous

¹ Repealed 56 & 57 Vict. c. 54.

place near the door and on the outside of the said house, and do not wilfully or knowingly permit drunkenness or other disorderly conduct in the said house, and do not knowingly allow the consumption of exciseable liquors¹ therein by the persons resorting thereto, and do not knowingly suffer any unlawful games therein, and do not knowingly suffer persons of notoriously bad character to assemble and meet together therein, and do not open the said house for play or allow any play therein after one and before eight of the clock in the morning, or keep it open or allow any play therein on Sundays, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving, but do maintain good order and rule therein : And this license shall continue in force from the (day of next, until the day of then next following, and no longer.

Given under our hands and seals on the day and at the place first written.

THE TOWNS POLICE CLAUSES ACT, 1847.

(10 & 11 VICT. C. 89.)

An Act for consolidating in one Act certain Provisions usually contained in Acts for regulating the Police of Towns.

[22nd July, 1847.]

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament for regulating the Police of Towns and Populous Districts, etc. : Be it enacted, etc.

29. Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station house within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion

¹ As to beer not being an exciseable liquor within the meaning of this license, see 43 & 44 Vict. c. 20, § 47.

of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days.¹

Penalty on
victuallers
harbouring
constables
while on
duty. **34.** Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public-house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty not exceeding twenty shillings.²

Penalty on
coffee-shop
keepers
harbouring
disorderly
persons. **35.** Every person keeping any house, shop, room, or other place of public resort within the limits of the special Act for the sale or consumption of refreshments of any kind who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises shall, for every such offence, be liable to a penalty not exceeding twenty shillings.³

73. Penalties under this Act are recoverable summarily before two justices, as under 8 Vict. c. 20, § 145.

THE LIQUEUR ACT, 1848.

(11 & 12 VICT. c. 121.)

An Act to alter the Laws and Regulations of Excise respecting the Survey of Dealers in and Retailers of Spirits, and respecting the Sale and Removal of Spirits by Permit from the Stock of such Traders; and respecting the Distribution of Penalties and Forfeitures recovered under the Laws of Excise.
[4th September, 1848.]

Licensed
dealers in **9.** Any person duly licensed as a dealer in spirits under an Act of the sixth year of the reign of his late Majesty

¹ Cf. L. A. 1872, § 12; and 2 & 3 Vict. c. 47, § 58.

² Cf. L. A. 1872, § 16; and 2 & 3 Vict. c. 93, § 16.

³ Cf. L. A. 1872, § 14; also 34 & 35 Vict. c. 112, § 10.

King George the Fourth, intituled An Act to repeal several Duties payable on Excise Licenses in Great Britain and Ireland, and to impose other Duties in lieu thereof, and to amend the Laws for granting Excise Licences, may take out an additional license authorizing such person to sell by retail any quantity (the same not being less than one reputed quart bottle, or in the bottles in which the same may have been imported) of foreign liqueurs, not to be drunk or consumed upon the premises.

spirits may take out an additional license to retail foreign liqueurs.
6 Geo. IV. c. 81.

10. For every such additional license there shall be paid an annual duty of excise of two pounds two shillings, which said duty shall be under the collection and management of the Commissioners of Excise, and shall be raised, recovered, paid, and accounted for in the same manner, and under the same enactments, provisions, pains, penalties, and forfeitures, as other license duties under the collection and management of the Commissioners of Excise are raised, recovered, paid, and accounted for.

Duty on additional license to be £2 2s., to be under the excise.

11. Every such license shall be in such form and shall contain such particulars as the Commissioners of Excise may direct, and shall be signed, granted, and issued by the proper officers of excise duly authorised to grant licenses; and every such license shall continue in force from the day of the date thereof until the fifth day of July following, on which day every such license shall expire, and shall be renewed if the same business is carried on; and all the enactments, provisions, pains, penalties, and forfeitures contained in the said recited Act of the sixth year of the reign aforesaid shall apply to and be in force in respect of the said additional license in the same manner as if the same had been one of the licenses originally included in that Act.

License to be in such form as the Commissioners of Excise direct, and to be granted by the officers of excise.

THE QUARTER SESSIONS ACT, 1849.

(12 & 13 VICT. c. 45.)

An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the Better Advancement of Justice in Cases within the Jurisdiction of those Courts. [28th July, 1849.]

Uniformity
of time for
notice of
appeal.

Whereas, in cases of appeal to Courts of General or Quarter Sessions of the peace it is expedient that the law should be more uniform, etc., In every case of appeal (except as hereinafter mentioned) to any Court of General or Quarter Sessions of the peace fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any act or acts, or any rule or practice of any Court or Courts, to the contrary notwithstanding; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their attorney on his, her, or their behalf, and the grounds of appeal shall be specified in every such notice; Provided always that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice.¹

Notice of
appeal to
be in
writing,
and signed.
Grounds of
appeal to
be stated.

2. This Act not to affect notices of appeal from proceedings under statutes relating to revenue of excise, etc.

Defects in
statement
of grounds
of appeal.

3. "And whereas a statement of the grounds of appeal when required by this or any other statute is for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial": Be it therefore enacted, that upon the hearing of any appeal to any Court of General or Quarter Sessions of the peace no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the Court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as

¹ This section is repealed so far as relates to any appeal against an order of a Court of summary jurisdiction, 47 & 48 Vict. c. 43, §§ 4, 6 (S. J. Act, 1884).

to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial; Provided always, that in all cases where the Court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such Court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the Court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such Court shall appear just and reasonable.¹

Amend-
ment of
grounds of
appeal.

4. . . . If in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall in the opinion of the Court determining the appeal be frivolous or vexatious, such appellant or appellants shall be liable, if the Court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner hereinafter directed as to the other costs incurred by reason of such appeal.

Frivolous
grounds of
appeal.

5. . . . Upon any appeal to any Court of General or Quarter Sessions of the peace the Court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such Court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an Act passed in the twelfth year of her Majesty's reign intituled An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Conviction and Orders.²

Sessions to
have a
general
power to
give costs
in all cases
of appeal.

11 & 12
Vict. c. 43.

¹ The words in italics were repealed by 54 & 55 Vict. c. 67.

² See 11 & 12 Vict. c. 43, § 27 (S. J. Act, 1848), which directs the costs to be paid to the clerk of the peace, to be by him paid over to the successful party, and that failing payment they may be enforced by a warrant of distress.

Frivolous
appeals.

6. And for the more effectual prevention of frivolous appeals . . . any Court of General or Quarter Sessions of the peace, upon proof of notice of any appeal to the same Court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said Court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid.

7. Power to Quarter Sessions to amend order or judgment of justices below.

8. Power to Quarter Sessions to amend defective recognisances.

Decisions
of sessions,
when final.

9. . . . The decisions of the Court of General or Quarter Sessions of the peace upon the hearing of any appeal, as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognisance or recognisances as aforesaid shall be final, and shall not be liable to be reviewed in any Court by means of a writ of certiorari or mandamus or otherwise.

Power to
state a
special case
without
going to
the sessions
previously.

11. . . . At any time after notice given of appeal to any Court of General or Quarter Sessions of the peace against any judgment, order, rate, or other matter (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by consent and by order of any judge of one of the superior Courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of such Superior Court, and to agree that adjudgment in conformity with the decision of such Court, and for such costs as such Court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision

shall have been given ; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the Court of General or Quarter Sessions upon an appeal duly entered and continued.

12—16. Matters subject of appeal to Quarter Sessions may be referred to arbitration.

THE BETTING ACT, 1853.

(16 & 17 VICT. c. 119.)

An Act for the Suppression of Betting Houses.

[20th August, 1853.]

*Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse races and the like contingencies : For the suppression thereof be it enacted, etc., as follows :—*¹

1. No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof betting with persons resorting thereto ; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise, or as or for

No house, etc., to be kept for purpose of owner or occupier betting with other persons.

¹ Preamble repealed, 55 & 56 Vict. c. 19.

the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law.

Betting
houses to
be gaming
houses
within
8 & 9 Vict.
c. 109.

2. Every house, room, office, or place opened, kept, or used for the purposes aforesaid, or any of them, shall be taken and deemed to be a common gaming house within the meaning of an Act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred and nine, to amend the law concerning games and wagers.

Penalty on
owner or
occupier of
betting
house.

3. Any person who being the owner or occupier of any house, office, room, or other place, or a person using the same, shall open, keep, or use the same for the purposes hereinbefore mentioned, or either of them; and any person who being the owner or occupier of any house, room, office, or other place, shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid, or either of them; and any person having the care or management of or in any manner assisting in conducting the business of any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them, shall, on summary conviction thereof before any two justices of the peace, be liable to forfeit and pay such penalty, not exceeding one hundred pounds, as shall be adjudged by such justices, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on the nonpayment of such penalty and costs, or in the first instance, if to the said justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding six calendar months.¹

Penalty on
persons
receiving
money on
condition of

4. Any person, being the owner or occupier of any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them, or any person acting for or on behalf of any such owner or occupier, or any person having

¹ So much of this section as prescribes the term of imprisonment for non-payment of penalty and costs is repealed by 47 & 48 Vict. c. 43.

the care or management or in any manner assisting in conducting the business thereof, who shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet on condition of paying any sum of money or other valuable thing on the happening of any event or contingency of or relating to a horse race or any other race, or any fight, game, sport, or exercise, or as or for the consideration for any assurance, undertaking, promise, or agreement express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency, and any person giving any acknowledgment, note, security or draft on the receipt of any money or valuable thing so paid or given as aforesaid purporting or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid, shall, upon summary conviction thereof before two justices of the peace, forfeit and pay such penalty, not exceeding fifty pounds, as shall be adjudged by such justices, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on the nonpayment of such penalty and costs, or in the first instance if to such justices it shall seem fit, may be committed to the common goal or house of correction, with or without hard labour, for any time not exceeding three calendar months.¹

5. Any money or valuable thing received by any such person aforesaid as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement as aforesaid, shall be deemed to have been received to or for the use of the person from whom the same was received, and such money or valuable thing, or the value thereof, may be recovered accordingly, with full costs of suit, in any court of competent jurisdiction.

Money so received may be recovered from the persons receiving the same.

6. Provided always, that nothing in this Act contained shall extend to any person receiving or holding any money or valuable thing by way of stakes or deposit to be paid to the winner of any race, or lawful sport, game, or exercise, or to the owner of any horse engaged in any race.

This Act not to extend to stakes due to owner of horse winning a race.

¹ Part repealed as in case of § 3; 47 & 48 Vict. c. 43.

Penalty on persons exhibiting placards or advertising betting houses.

7. Any person exhibiting or publishing or causing to be exhibited or published any placard, handbill, card, writing, sign, or advertisement whereby it shall be made to appear that any house, office, room, or place is opened, kept, or used for the purpose of making bets or wagers, in manner aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making bets or wagers, in manner aforesaid, or any person who, on behalf of the owner or occupier of any such house, office, room, or place, or person using the same, shall invite other persons to resort thereto for the purpose of making bets or wagers, in manner aforesaid, shall, upon summary conviction thereof before two justices of the peace, forfeit and pay a sum not exceeding thirty pounds, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on the nonpayment of such penalty and costs, or in the first instance if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding two calendar months.¹

Penalties and costs may be levied by distress.

8. If any person convicted under this Act on information before justices shall be adjudged to pay any penalty, or any costs and charges attending the conviction, and shall fail to pay such penalty or costs, the same may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of one of the convicting justices: provided always, that if any person shall be committed to prison for default of payment of any penalty and costs, then the costs alone may be levied by distress as aforesaid.

Application of penalties.

9. One half of every pecuniary penalty which shall be adjudged to be paid under this Act shall be paid to the informer, and the remaining half shall be applied in aid of the poor rate of the parish in which the offence shall have been committed, and shall be paid for that purpose to the overseer or other person authorised to receive poor rates in such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then the justices

¹ See *post*, Betting Act, 1874 (37 & 38 Vict. c. 15), § 3.

by whom such penalty shall be adjudged to be paid shall direct such remaining half thereof to be applied in aid of the poor rate of such extra-parochial place, or, if there shall not be any poor rate therein, in aid of the poor rate of any adjoining parish or district.

10. In case any person who shall have laid any complaint or information in respect of any offence against this Act shall not appear at the time of which the defendant may have been summoned to appear, or at any time to which the hearing of the summons may have been adjourned, or, in the opinion of any justices having authority to adjudicate with respect to the offence charged in such information or complaint as aforesaid, shall otherwise have neglected to proceed upon or prosecute such information or complaint with due diligence, it shall be lawful for such justices to authorise any other person to proceed on such summons instead of the person to whom the same may have been granted, or, if such justices think fit, to dismiss the summons already granted, and authorise any person to take out a fresh summons in respect of the offence charged in such information or complaint, in like manner as if the previous summons had not been granted.

On neglect to prosecute any summons, justices may authorise some other person to proceed.

11. It shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, office, room, or place to be kept or used as a betting house or office, contrary to this Act, to give authority by special warrant under his hand, when in his discretion he shall think fit, to any constable or police officer, to enter, with such assistance as may be found necessary, into such house, office, room, or place, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of the peace all such persons found therein, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises; and any such warrant may be according to the form given in the first schedule annexed to the before-mentioned Act "to amend the Law concerning Games and Wagers."

Justices may authorise search of suspected houses.

Commissioner of police may authorise superintendent of police to enter and search suspected houses.

12. If any superintendent belonging to the metropolitan police force shall report in writing to the commissioners of police of the metropolis that there are good grounds for believing and that he does believe that any house, office, room, or place within the metropolitan police district is kept or used as a betting house or office, contrary to this Act, it shall be lawful for either of the said commissioners by order in writing to authorise the superintendent to enter any such house, office, room, or place, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises.

Appeal to Quarter Sessions.

13. Person convicted summarily may appeal to the next Quarter Sessions.

14. Certiorari taken away.¹

THE REFRESHMENT HOUSES ACT, 1860.

(23 & 24 VICT. c. 27.)

An Act for granting to her Majesty certain Duties on Wine Licenses and Refreshment Houses, and for regulating the licensing of Refreshment Houses and the granting of Wine Licenses.
[14th June, 1860.]

1. Certain duties to be charged for licenses herein mentioned.²

Powers and provisions of Excise Acts to

2. The duties by this Act granted shall be deemed to be excise duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being;

¹ §§ 15-20, both inclusive, repealed by 47 & 48 Vict. c. 43; 57 & 58 Vict. c. 56; 55 & 56 Vict. c. 19; 37 & 38 Vict. c. 15.

² These duties varied by 24 & 25 Vict. c. 91, §§ 8-11; and 43 & 44 Vict. c. 20, §§ 41, 42. See also 38 & 39 Vict. c. 66; 39 & 40 Vict. c. 16, § 4.

and all powers, provisions, and regulations, penalties, and forfeitures contained in or enacted by any Act in force in relation to excise duties, shall, in all cases not herein expressly provided for, and so far as the same are not superseded by and are consistent with the express provisions of this Act, be duly observed, applied, and put in execution for ascertaining the rent or value of any house or premises in respect of which any license shall be applied for under this Act, and for charging, collecting, and securing the said duties hereby granted, and otherwise relating thereto, as fully and effectually as if the same powers, provisions, and regulations, penalties and forfeitures, were repeated and re-enacted in the body of this Act with reference to such rent or value and to the said duties hereby granted.

3. Every person who shall keep a shop for the sale of any goods or commodities other than foreign wine, or who shall have taken out a license as a dealer in wine (except persons expressly disqualified by this Act), shall, without producing or having any other license or authority, be entitled to take out a license under this Act to sell by retail, and in reputed quart or pint bottles only, in such shop foreign wine not to be consumed on the premises where sold, anything in any former Act to the contrary notwithstanding.

4. Every sale of foreign wine in any less quantity than two gallons, or in less than one dozen reputed quart bottles, at one time, shall be deemed to be a selling by retail.¹

6. All houses, rooms, shops, or buildings kept open for public refreshment, resort, and entertainment at any time between the hours of [ten] of the clock at night and five of the clock of the following morning, not being licensed for the sale of beer, cider, wine, or spirits respectively, shall be deemed refreshment houses within this Act, and the resident owner, tenant, or occupier thereof shall be required to take out a license under this Act to keep a refreshment house; and every person who shall keep any house, room, shop, or building for the purpose of selling therein any victual or refreshment to be consumed on the premises where the same

¹ § 5 of the present Act as to permitting drinking of wine on neighbouring premises in evasion of the Act is repealed by L. A. 1872.

shall be sold (except beer, cider, wine, and spirits sold respectively under a proper license in that behalf), and every person who shall keep any house, room, shop, or building for the consumption therein by the public of any refreshment (except as aforesaid), although the same shall not be sold therein, may, if he shall think fit, take out a license under this Act to keep a refreshment house; and in all proceedings and upon all occasions whatever it shall be sufficient to describe by the term refreshment house any house, room, shop, or building in which any such article as aforesaid (except as aforesaid) is sold to be consumed, or is consumed as aforesaid, without further or otherwise designating or describing the same.¹

Confectioners and eating-house keepers entitled to take out licenses to sell wine to be drunk on the premises.

7. Every person who shall be licensed to keep a refreshment house, and shall pursue therein the trade or business of a confectioner, or shall keep open such house as an eating-house, for the purpose of selling, to be consumed therein, animal food or other victuals wherewith wine or other fermented liquors are usually drunk, shall be entitled (subject to the terms and conditions of this Act, and not being expressly disqualified thereby,) to take out a license to sell foreign wine by retail in such refreshment house, to be consumed on the premises where the same shall have been sold, without producing or having any other license or authority than as aforesaid; and every confectioner and eating-house keeper respectively who shall have taken out such license to retail wine under this Act, shall not be subject or liable to any penalty or forfeiture under any other Act or Acts by reason or on account of his selling wine by retail, or having the same in his possession in his entered premises, anything in any other Act or Acts to the contrary notwithstanding.

Wine licenses not to be granted for refreshment houses under a certain rent or annual value.

8. Provided always, that no licence to sell foreign wine by retail to be consumed on the premises shall be granted for any refreshment house which, with the premises belonging thereto and occupied therewith, shall be under the rent and value of ten pounds a year, nor for any refreshment house situated in any city, borough, town, or place containing a population exceeding ten thousand according to the then last

¹ "Ten" substituted for "nine" in this section by 24 & 25 Vict. c 91, § 8.

parliamentary census, if such refreshment house, with the premises belonging thereto and occupied therewith, shall be under the rent and value of twenty pounds a year; and no sheriff's officer, or officer executing the legal process of any court of justice, shall be capable of receiving or using any license under this Act to sell wine by retail to be consumed on the premises; and every license which shall be granted contrary hereto shall be void to all intents and purposes.¹

Persons disqualified to hold wine licenses.

9. Every person who shall keep a refreshment house for which a license is required by this Act, without taking out and having in force a proper license in that behalf granted to him under the authority of this Act, shall forfeit a sum not exceeding twenty pounds, which penalty shall be recovered as hereinafter directed.²

Penalty for keeping a refreshment house without license, £20.

10. All licenses authorised to be granted under this Act shall be granted by and under the hands of the collector or other person having charge of the excise collection, and the supervisor of excise of the district within which respectively the refreshment house or other house or shop for or relating to which any such license shall be required, or by such other person or persons as the Commissioners of Inland Revenue shall appoint or authorise in that behalf, on payment of the duty chargeable for such licenses respectively. . . . Provided always, that it shall be lawful for the Commissioners of Inland Revenue from time to time to make such alterations therein as they may deem to be necessary in consequence of any alteration or amendment of the law, in order to make such form of license conformable to the law for the time being.³

By whom licenses under this Act shall be granted.

11. All licenses which shall be granted under the authority of this Act between the thirty-first day of March and the first day of May in any year shall be dated on the first day of April, and all licenses which shall be granted at any other time shall be dated on the day on which the same shall

Licenses: date expiration, and renewal thereof.

¹ Cf. 9 Geo. IV. c. 61, § 16; 3 & 4 Vict. c. 61, § 1; L. A. 1872, §§ 45, 46, 47.

² This penalty was made an excise penalty to be recovered as directed in § 43 of this Act, by 23 & 24 Vict. c. 113, § 42.

³ Words omitted (which prescribed form of license) are repealed, 38 & 39 Vict. c. 66.

be granted; and all such licenses, whensoever granted, shall have effect on and after the day of the date thereof until the first day of April then next following, and shall be renewed annually on payment of the duty by this Act charged thereon respectively.¹

On death of a licensed person, his representative, or widow or child, may be authorised to continue the business for which the license was granted, for the remainder of the term thereof.

12. Upon the death of any person licensed under this Act before the expiration of the license, it shall be lawful for the persons authorised to grant licenses to authorise and empower, by endorsement or otherwise, as the Commissioners of Inland Revenue shall direct, the executors or administrators or the widow or child of such deceased person who shall be possessed of and occupy the dwelling house and premises before used for such purpose, to continue the business for which such license was granted, and to sell in the same house and premises such articles as by the said license are authorised to be sold therein, during the residue of the term for which such license was originally granted, without taking out any fresh license or payment of any additional duty thereon, and the person so authorised and empowered shall then be deemed to be a person licensed under this Act, and accordingly subject to the provisions, conditions, regulations, and penalties contained therein.²

A list of licenses to be kept by collectors and supervisors for inspection of the justices, and copies of the list to be transmitted to the justices' clerk.

16. A list or register of every license granted under the authority of this Act, specifying the name and place of abode of every person licensed, and the name and description of the house for which such license shall be granted, and whether the license shall be to keep a refreshment house or for the sale of wine therein, shall be kept at the office or dwelling house of every collector and supervisor of excise in their respective collections and districts; and such list or register shall at all times be produced to and shall be open to the inspection and perusal of any justice of the county or place where such license shall be granted and where such house shall be situate, and a copy of such list and register shall,

¹ See now 33 & 34 Vict. c. 29, § 4 (5).

² Cf. L. A. 1872, § 3. The following sections, 13 and 14, relating to the notices to be given on application for licenses, and § 15 providing that justices might object to renewals of wine licenses, are repealed by 32 & 33 Vict. c. 27, § 21.

once in every six months, be transmitted by every collector and supervisor of excise to the clerk of the magistrates for the district in which such license shall be granted, and any copy or extract of or from such list or register which shall be at any time required by the clerk to the said justices shall be given to him by such collector or supervisor whenever thereto required.¹

18. It shall be lawful for all constables and officers of police, when and so often as they shall respectively think proper, to enter into all houses licensed as refreshment houses under the authority of this Act, and into and upon the premises belonging thereto; and if any person licensed to keep a refreshment house, or any servant or other person in his employ or by his direction, shall refuse to admit or shall not admit any constable or officer of police demanding admittance into such refreshment house or upon such premises, the person so licensed shall for the first offence forfeit and pay any sum not exceeding five pounds, together with the costs of conviction, to be recovered before one or more justices of the peace, on information or complaint made within seven days next after the day on which such offence was committed; and it shall be lawful for any two or more justices before whom any such person shall be convicted for the second time of any such offence to adjudge (if they shall so think fit) the license or licenses of such offender in respect of such refreshment house to be forfeited, and that he shall be disqualified from having any license granted to him under this Act in respect of such house for the space of two years, or for such shorter space of time as they may think proper to adjudge.²

Constables and police officers empowered to visit licensed refreshment houses.

Penalty for refusing them admittance.

License to be forfeited on second conviction if justices think fit.

19. Every person who shall sell any wine by retail, whether to be consumed on the premises or not, without having a proper license in force duly authorising him in that behalf, shall, over and above any other penalty to which he

Penalty for selling wine by retail without license.

¹ As to justices' register, see L. A. 1872, §§ 36, 58; § 17 of the present Act as to production of wine license on requisition of two justices is repealed by L. A. 1872.

² Repealed so far as it relates to the sale of intoxicating liquors or any offences connected therewith, L. A. 1872. As to such liquors, see now L. A. 1874, § 16.

may be liable, forfeit the sum of twenty pounds, which shall be denominated an excise penalty.¹

What shall be deemed foreign wine, and what shall be deemed spirits.

21. All liquor which shall be sold or offered for sale by any person, whether licensed under this Act or not, as being foreign wine, or under the name by which any foreign wine is usually designated or known, shall, as against the person who shall so sell or offer the same for sale, be deemed and taken to be foreign wine; and any fermented liquor containing a greater proportion than forty *per centum* of proof spirit shall be deemed and taken to be spirits.

Licenses to be void on conviction of felony or selling spirits without license.

22. Every person who shall be convicted of felony or of selling spirits without license shall for ever thereafter be disqualified from selling wine by retail, and no license to sell wine by retail under this Act shall be granted to any person who shall have been so convicted as aforesaid; and if any person shall, after having been so convicted as aforesaid, take out or have any license to sell wine by retail under this Act, the same shall be void to all intents and purposes; and every person who shall, after being convicted as aforesaid, sell any wine by retail in any manner whatsoever, shall incur the penalty for so doing without license; and in all such cases, in the prosecution for the recovery of such penalty a certificate from the clerk of assize or the clerk of the peace or person acting as such of any such conviction as aforesaid shall on the trial in such prosecution be legal evidence thereof.²

Licensed retailers of wine to make entry of houses, etc., with the excise.

23. Every person licensed to retail wine under this Act shall, in manner directed by the laws of excise in that behalf, make entry with the proper officer of excise of every house, cellar, room, and place for storing, keeping, or retailing of wine, on pain of forfeiting the penalties imposed by the statutes in that behalf for making use of any unentered room or place; and all wine found in any such unentered house, cellar, room, or place shall be forfeited.³

¹ Cf. 6 Geo. IV. c. 81, § 26; 1 Wm. IV. c. 64, § 7; § 20 of the present Act imposing an additional penalty on unlicensed selling of wine is repealed by L. A. 1872.

² Cf. 3 & 4 Vict. c. 61, § 7; 33 & 34 Vict. c. 29, § 14

³ Cf. 7 & 8 Geo. IV. c. 53, § 20.

24. It shall be lawful for any officer of excise, during the hours in which any house licensed for the retail of wine to be consumed on the premises may be kept open, to enter into every house, cellar, room, or place entered for the storing, keeping, or retailing of wine to be consumed as aforesaid, and to make search for and seize all spirits which may be found in any such house, cellar, room, and place, and to examine all wine kept therein.

Excise officers empowered to enter the premises of licensed retailers of wine.

25. If any person licensed to retail wine under this Act shall receive into or keep or have in his possession, in any cellar, room, or place entered for storing, keeping, or retailing wine, any spirits, he shall, in addition to all other penalties, forfeit the sum of fifty pounds, which shall be denominated an excise penalty; and all spirits found in any such entered cellar, room, or place shall be forfeited; and on conviction of any such licensed person in any penalty for having spirits in his possession, or for selling or retailing spirits, the license of such person for retailing wine shall become null and void, and shall be so adjudged.¹

Penalty on persons licensed to retail wine having spirits in their entered premises.

30. All penalties under this Act, except those denominated excise penalties, shall be recovered upon the information or complaint of a constable or other peace officer before two justices acting in petty sessions, and shall be prosecuted and proceeded for within three calendar months next after the commission of the offence in respect of which such penalty shall be incurred, or within such shorter time as may be herein limited with regard to any particular penalty; and every person licensed under this Act to retail wine, to be consumed on the premises, who shall be convicted before two justices so acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the license to him granted under this Act, or of any offence for which any penalty is imposed by this Act, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted within the space of twelve calendar

Penalties other than excise penalties recoverable before two justices in petty sessions, within three months after offence committed.

¹ Cf. L. A. 1872, § 10. The following sections of the present Act, viz., § 26 requiring standard measures to be used, § 27 as to hours of closing, § 28 as to closing in case of riot, and § 29 imposing a penalty upon permitting drunkenness, are all repealed by L. A. 1872.

Second
offence.

months next preceding of some offence against the tenor of his license or against this Act, be adjudged to be guilty of a first offence against the provisions of this Act, and to forfeit and pay any penalty by this Act imposed for such offence, or if no specific penalty be so imposed then any sum not exceeding five pounds, together with the costs of the conviction; and if such proof as aforesaid shall be adduced that such person had been previously convicted within the space of twelve calendar months next preceding of one such offence only, such person shall be adjudged to be guilty of a second offence against the provisions of this Act, and to forfeit and pay any penalty by this Act imposed for such offence, or if no specific penalty be so imposed then any sum not exceeding ten pounds, together with the costs of the conviction; and if such proof as aforesaid shall be adduced that such person had been previously convicted within the space of eighteen calendar months next preceding of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged to be guilty of a third offence against the provisions of this Act, and to forfeit any penalty imposed by this Act in respect of such offence, or if no such specific penalty shall be so imposed then to forfeit and pay the sum of fifty pounds, together with the costs of the conviction.¹

Third
offence

Penalties
for offences
in refresh-
ment
houses.

32. Every person licensed to keep a refreshment house under this Act who shall (without a license for that purpose) sell or permit or suffer to be sold within such refreshment house any intoxicating liquor, or shall knowingly suffer any unlawful games or gaming therein, or knowingly suffer prostitutes, thieves, or drunken and disorderly persons to assemble at or continue in or upon his premises, or do, suffer, or permit any act in contravention of his license, shall, upon conviction thereof before two justices, pay for the first offence a fine not exceeding forty shillings, for the second offence a fine not exceeding five pounds, and for every subsequent offence a fine not exceeding twenty pounds, or be

¹ Repealed so far as it relates to the sale of intoxicating liquors or any offences connected therewith, L. A. 1872. Section 31 of the present Act as to disqualification of premises licensed for the sale of wine by repeated convictions is repealed as § 30, *supra*, and therefore omitted.

subject to a forfeiture of his license, at the discretion of the justices before whom he shall be convicted; and in case of such forfeiture of his license, such person shall be disqualified for the space of one year then next ensuing from obtaining a fresh license; and such fresh license, if obtained within the said year, shall be absolutely null and void to all intents and purposes.¹

33. It shall be lawful for the justices before whom any person shall be convicted of any offence against this Act to mitigate, if they shall see cause, any penalty incurred for such offence; provided that where any conviction shall take place on any information exhibited under the laws of excise such penalty shall not be mitigated to any sum less than one fourth part thereof.¹

34. Provided always, that it shall be lawful for the party convicted of any such second or third offence to appeal to the General or Quarter Sessions of the peace then next ensuing, unless such sessions shall be held within twelve days next after such conviction, and in that case to the then next subsequent sessions; and in such case the party so convicted shall, before the convicting justices, forthwith enter into a recognisance, with two sufficient sureties, personally to appear at such General or Quarter Sessions, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded, which recognisances such justices are hereby authorised to require and take, or in failure of the party convicted entering into such recognisance the conviction shall remain good and valid to all intents and purposes; and the said justices who shall take such recognisance from the party convicted are also hereby required to bind the person who shall make such charge in a recognisance to appear at such General or Quarter Sessions as aforesaid, then and there to give evidence against the person so charged, and in like manner to bind any other person who shall have any knowledge of the circumstances of such offence; and it shall be lawful for such Court of General or Quarter Sessions to adjudge such person to be guilty of any such second or third offence against the provisions of this Act, as the case may be, and

Power to
justices to
mitigate
penalties.

Appeal to
the sessions
against a
second or
third con-
viction.

¹ Repealed as § 30, *supra*.

such adjudication shall be final to all intents and purposes; and it shall be lawful for such Court of General or Quarter Sessions to punish such offender by fine not exceeding the sum of one hundred pounds, together with the costs of such appeal, or to adjudge the license granted to and held by or on behalf of such offender to be forfeited and void, or to adjudge that no wine shall be sold by retail in the house or premises mentioned in the license of such offender for the term of two years from the date of such adjudication, or to punish such offender by such fine as aforesaid, and to adjudge such premises to be disqualified for the sale of wine as aforesaid, and such license to be forfeited and void, and if such license shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and whenever in such case or in any other case the license of such offender shall be adjudged to be void, such offender shall from and after such adjudication be deemed and taken to be incapable of selling wine by retail in any house kept by him for the space of two years, to be computed from the time of such adjudication, and any license granted to such person during such term shall be void to all intents and purposes.¹

Court to
adjudge
costs of
appeal in
certain
cases.

35. Whenever it shall happen that any appeal in pursuance of this Act shall be dismissed, or that the judgment appealed against shall be affirmed, or that such appeal shall be abandoned, it shall be lawful for the Court to which such appeal shall have been made or intended to have been made, and such Court is hereby required, to adjudge and order that the party so having appealed, or having entered into such recognisance, shall pay to the justices against whose judgment such appeal shall have been made or intended to be made, or to whomsoever they shall appoint, such sum by way of costs as shall in the opinion of such Court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been put in consequence of the intention or declared intention of such party to appeal; and if such party shall refuse or neglect to pay forthwith such sum, it shall be lawful for the said Court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of cor-

¹ Repealed as § 30, *supra*.

rection, there to remain until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid; and in every case in which the judgment so appealed against shall be reversed it shall be lawful for such Court (if it shall think fit) to adjudge and order that the treasurer of the county or place in and for which such justices whose judgment shall have been so reversed shall have acted on the occasion when they shall have given such judgment shall pay to such justices, or to whomsoever they shall appoint, such sum as shall in the opinion of such Court be sufficient to indemnify such justices from all costs and charges whatsoever to which they may have been so put; and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts.¹

36. In every case in which any appeal shall be made by any person convicted of any offence under the provisions of this Act to the General or Quarter Sessions it shall be lawful for the convicting justices, if no other fit and proper person shall appear, to prosecute such charge, and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that a constable of the City of London police force within the City of London and liberties thereof, or a constable of the metropolitan police force within the metropolitan police district, or if elsewhere the superintendent or inspector of police of the district, or the constable or other peace officer of the parish or place in which the house kept by the person charged shall be situate, as to the said justices shall seem fit, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind any such constable, or the said superintendent or inspector of police, or other peace officer, in a sufficient recognisance so to do; and it shall be lawful for the justices before whom such offender shall have been convicted to order the treasurer of the county or place in and for which such justices shall then act to pay to such constable, superintendent, inspector, or other peace officer, and to the witnesses on his behalf, such sum or sums of money as to the Court shall appear to be sufficient to reimburse them respectively the expenses which they shall have been severally put to in and

Proceedings on appeal to be carried on by the constable, and the expenses of prosecution to be charged on county rates.

¹ Repealed as § 30, *supra*.

about such prosecution, which order the clerk of the peace is hereby directed and required forthwith to make out, and to deliver to such constable, superintendent, inspector, or other peace officer and witnesses respectively; and the said treasurer is hereby authorised and required, upon sight of such order, forthwith to pay to the person authorised to receive the same such money as aforesaid, and the said treasurer shall be allowed the same in his accounts.¹

Power to
lord mayor,
alderman,
or justices
of the
peace to
summon
witnesses
and
examine
them on
oath.

37. It shall be lawful for the said lord mayor or alderman, and for the justices of the peace before whom respectively any question shall be depending touching any objection against the granting or renewing of a license under the provisions of this Act, to summon witnesses on behalf of either party to such question, and to examine all such witnesses on oath, and to do and perform all things necessary for the due and proper hearing and determination of such question, and also to order payment of fees, allowances, and reasonable expenses to their clerks, and to all witnesses, constables, and other persons by whom any duties shall have been performed or expenses or loss of time incurred respectively under this Act; and the amount of such fees, allowances, and expenses shall be ascertained according to the tables of fees and allowances for the time being in force in the county, city, or borough respectively within which the refreshment house in question shall be situate; and the order for payment may be made at the discretion of the said lord mayor, alderman, or justices, either wholly or partially, on the applicant or on the objector, or, if the equity of the case shall seem so to require, then on the treasurer of the county, city, or borough aforesaid, who shall be reimbursed out of the county or borough rate; and the provisions of the Act passed in the eleventh and twelfth years of the reign of her Majesty, chapter forty three, for the recovery of costs ordered by justices in petty sessions to be paid, shall apply to all costs, allowances, and expenses ordered to be paid under this Act.

Penalty on
witnesses
refusing to
attend or
to give
evidence.

38. Any person summoned as a witness to give evidence before the said lord mayor or alderman, or any justices or sessions, touching any matters arising under this Act, either on the part of the complainant or of the person accused, or

¹ Repealed as § 30, *supra*.

of any person interested in any such matter, who shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such lord mayor or alderman or justices or sessions, or who appearing shall refuse to be examined on oath or affirmation and give evidence, shall, on conviction, forfeit and pay any sum not exceeding ten pounds for every such offence.¹

41. Any person who shall be drunk, riotous, quarrelsome, or disorderly in any shop, house, premises, or place licensed for the sale of beer, wine, or spirituous liquors by retail to be consumed on the premises, or for refreshment, resort and entertainment under the provisions of this Act, and shall refuse or neglect to quit such shop, house, premises, or place upon being requested so to do by the manager or occupier, or his agent or servant, or by any constable, shall, on conviction thereof before one justice, be liable to pay a fine not exceeding forty shillings; and all constables are hereby authorised, empowered, and required, on the demand of such manager, occupier, agent, or servant, to assist in expelling such drunken, riotous, quarrelsome, and disorderly persons from such shops, houses, premises, and places.²

Penalty on drunken and disorderly persons refusing to quit licensed houses on request. Constables to assist in expelling them if required.

42. And with regard to all penalties incurred under this Act, except the penalties herein denominated excise penalties, all the provisions contained in the Act passed in the eleventh and twelfth years of her Majesty, chapter forty-three, relating to proceedings for the recovery of penalties by summary conviction, and to appeals against such convictions, and the levying and enforcing of penalties, and the costs of such proceedings, shall be applied and put in force in relation to the penalties by this Act imposed.²

Provisions of 11 & 12 Vict. c. 43, to be applied in the recovery of penalties under this Act.

43. The penalties imposed by this Act denominated excise penalties shall be recovered, levied, mitigated, and applied by the same ways, means, and methods, and in like manner,

How excise penalties under this Act are to

¹ Repealed as § 30, *supra*. §§ 39 and 40 of the present Act relating to the offences of harbouring constables and being riotous or disorderly while drunk are repealed by L. A. 1872.

² Repealed as § 30, *supra*.

be recovered,
etc.

as penalties may be recovered, levied, mitigated, and applied under the laws of excise in that behalf.

Covenants
against
houses,
etc., being
used as
public
houses to
extend to
persons
licensed to
sell wine
under this
Act.

44. Provided always, that any covenant or clause of restriction contained in any lease or contract between a landlord and tenant, whereby the trade or business of a vintner is prohibited from being carried on in any house, building, or place mentioned or comprised in such lease or contract, or whereby any such house, building, or place is prohibited from being used as a public house, shall be construed to apply and extend to every person who shall be licensed to sell wine to be consumed on the premises under the provisions of this Act, and to any house specified in the license granted to such person.¹

Act not to
affect the
two Uni-
versities,
or the
Vintners'
Company
in London,
or the
borough of
St. Albans.

45. Nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or the powers of the chancellors or vice-chancellors of the same, as by law possessed under the respective charters of the said Universities or otherwise, or the master, wardens, freemen, and commonalty of the Vintners of the City of London, except as to those freemen of the said Company of Vintners who have obtained the same by redemption only, or the mayor or burgesses of the borough of St. Albans in the county of Hertford, or their successors.²

Extent of
Act.

46. This Act shall not extend to Scotland or Ireland.

*Schedules.*³

THE EXCISE ACT, 1860.

(23 & 24 VICT. c. 113.)

Dealers in
sweets or
made wines
to take out

7. Every person who shall sell any kind of sweets or made wines, or mead, or metheglin in any quantity amounting to two gallons or upwards, or in one dozen or more

¹ Cf. 1 Wm. IV. c. 64, § 31.

² See note 2, p. 278, *ante*.

³ Containing forms of licenses to be granted under this Act repealed 38 & 39 Vict. c. 66.

reputed quart-bottles at one time, shall annually take out a license in that behalf under this Act, on pain of forfeiting the sum of fifty pounds for any neglect or omission to take out such license. license annually.

THE REVENUE (No. 1) ACT, 1861.

(24 & 25 VICT. c. 21.)

An Act for granting to Her Majesty certain Duties of Excise and Stamps. [28th June, 1861.]

1. There shall be charged, collected, and paid for the use of her Majesty, her heirs and successors, the several duties of excise and stamps specified and contained in the schedules marked respectively (A.) and (B.) to this Act annexed.¹ Grant of duties specified in schedules annexed.

2. Any person duly licensed as a dealer in spirits in England may take out an additional license authorising him to sell by retail foreign or British spirits in any quantity not less than one reputed quart bottle, or, as to foreign liqueurs, in the bottles in which the same may have been imported, not to be drunk or consumed upon the premises.² Power to licensed dealers in spirits to take out an additional license.

3. It shall be lawful for any person to take out a license for the sale in any house or shop of table beer, at a price not exceeding the rate of one penny halfpenny the quart, and not to be drunk or consumed on the premises where sold; and it shall not be necessary to the obtaining of such license that the said house or shop shall be rated to the relief of the poor to any amount.³ Licenses may be granted for the sale of table beer by retail not to be drunk on the premises, without persons being rated

4. All the powers, provisions, clauses, regulations, allowances, and exemptions, forfeitures, pains, and penalties contained in or imposed by any Act or Acts, or any schedule thereto, relating to any duties of the same kind or description as the several rates or duties granted by this Act respectively, Provisions of former Acts to apply to this Act.

¹ Part of this section is repealed, 38 & 39 Vict. c. 66.

² Part of this section is repealed, 43 & 44 Vict. c. 24.

³ Part of this section is repealed, 41 & 42 Vict. c. 79.

and in force at the time of the passing of this Act, shall respectively be of full force and effect with respect to the said duties by this Act granted respectively, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said last-mentioned duties respectively, and otherwise in relation thereto, so far as the same shall not be superseded by and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the duties by this Act granted respectively.

* * * * *

SCHEDULE (A.)—CONTAINING THE DUTIES OF EXCISE GRANTED BY THIS ACT.

RETAIL LICENSE TO DEALERS IN SPIRITS.

For and upon every additional excise license to be taken out by any licensed dealer in spirits in Great Britain to authorise and empower him to sell by retail foreign or British spirits in any quantity not less than one reputed quart bottle, or as to foreign liqueurs in the bottles in which the same may have been imported, and not to be drunk or consumed on the premises, the sum of	£ s. d 3 3 0
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LICENSE TO SELL TABLE BEER.

For and upon every excise license to be taken out by any person for the sale in any house or shop of table beer at a price not exceeding the rate of one penny halfpenny the quart, and not to be drunk or consumed on the premises where sold	0 5 0
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THE REVENUE (No. 2) ACT, 1861.

(24 & 25 VICT. C. 91.)

An Act to amend the Laws relating to the Inland Revenue.

[6th August, 1861.]

8. For the amendment of two general Acts passed in the last session of Parliament, chapter twenty-seven and chapter one hundred and seven, be it enacted, that no person shall be compellable to take out a license under either of the said Acts to keep a refreshment house whose house, room, shop, or building shall not be kept open for public refreshment, resort, and entertainment after the hour of ten of the clock at night; and the said Acts shall be read and construed as if the word "ten" had been substituted for the word "nine" in the sixth section of the said Acts respectively.

Persons not compellable to take out a refreshment house license for a house not kept open after ten o'clock at night.

9. And in lieu of the duties chargeable under the said last-mentioned Acts respectively for every license to keep a refreshment house there shall be charged the following duties; that is to say,

Lower rate of duty on refreshment house licenses for houses under £30 annual value.

If the house and premises in respect of which such license shall be granted shall in England be under the rent and value or in Ireland be under the value of thirty pounds a year, the duty of ten shillings and sixpence:

And if the same shall be of the rent or value of thirty pounds a year or upwards, the duty of one pound and one shilling:

And whenever any person who shall have taken out a license to keep a refreshment house, not being a house open after ten o'clock at night, shall apply for and obtain a license under either of the said Acts to sell therein by retail foreign wine to be consumed in such house, he shall be allowed an abatement at the rate per annum hereinafter mentioned from the duty chargeable for such last-mentioned license in respect of the same period of time or portion of the year for which he shall take out the said license to retail wine; (that is to say,)

Allowance of duty paid for refreshment house license to be made on taking out wine license.

Where the house and premises in respect of which	£	s.	d.
such licenses shall be granted shall in England			
be under the rent and value, or in Ireland be			
under the value of thirty pounds a year, an			
abatement of	0	7	4
And where the same shall be of the rent or value			
of thirty pounds or upwards, an abatement of	0	17	10

Provided always, that if any person to whom any such abatement as aforesaid shall have been made on taking out a wine license shall keep open his house as a refreshment-house or shall sell therein any wine or other refreshment after the hour of ten of the clock at night, he shall be deemed to keep a refreshment house without taking out and having in force a proper license in that behalf; and also in respect of any wine sold by him after the hour aforesaid he shall be deemed to have sold the same without having a proper license in force duly authorising him in that behalf, and shall forfeit the penalties imposed for such offences respectively by the ninth and nineteenth sections of the said Act of the last session of Parliament, chapter twenty-seven.¹

Persons
licensed to
retail beer
not pre-
cluded
from
taking out
wine
licenses.

10. And whereas an Act was passed in the last session of Parliament, chapter twenty-seven, for granting to her Majesty certain duties on wine licenses and refreshment houses, and doubts have arisen whether persons licensed to retail beer in England are precluded from taking out or having granted to them a license for the sale of wine under the said Act: for the removal of such doubts be it declared and enacted, that nothing in the said Act or in any other Act or Acts contained shall be adjudged, deemed, or construed to preclude or disqualify any person from taking out or having granted to him any license for the sale of wine under the said Act of the last session of Parliament, by reason or on account of his being licensed for the sale of beer under any Act or Acts in that behalf.

Persons
licensed to

11. No person licensed for the sale of wine under the Act passed in the last session of Parliament, chapter twenty-

¹ The scale of abatement here given was substituted in this section for the original scale, by 39 & 40 Vict. c. 16, § 4. Different duties from those given in this section were enacted by 39 & 40 Vict. c. 16, § 4; but these are now repealed 46 & 47 Vict. c. 39.

seven, shall be subject or liable to any penalty or forfeiture under any Act relating to the retailing of beer by reason or on account of his selling, dealing in, retailing, or receiving into, or having in his possession any wine or sweets or made wines, or mead or metheglin, anything in any such Act or Acts as last mentioned to the contrary notwithstanding.¹

retail wine
not to be
subject to
penalty
under the
Beer Acts,
for having
wine or
sweets in
possession.

13. *Exemptions as to the sale of beer or spirits at fairs or races not repealed by 23 & 24 Vict., cc. 113 and 114.*²

14. Whereas the licenses authorising the retailing of beer granted under the authority of three several Acts passed respectively in the first year of the reign of his late Majesty King William the Fourth, chapter sixty-four, in the fourth and fifth years of the same reign, chapter eighty-five, and in the third and fourth years of the reign of her present Majesty, chapter sixty-one, are directed by the first of the said Acts to be dated on the day when the same shall be granted, and to expire at the end of twelve calendar months after the day on which such licenses shall be dated, and it is expedient that all such licenses should expire at one and the same period of the year: Be it enacted, that every license taken out under the said recited Acts . . . shall be in force from the day of the date of such license until the 10th day of October next following the granting thereof; . . . and every person who shall . . . take out a license under the said Acts for the first time shall be entitled to the same on payment of a proportionate part of the duty thereon in the same manner as a person commencing a trade or business for which an excise license is required may now take out a license under the provisions contained in the seventeenth section of the Act passed in the sixth year of the reign of King George the Fourth, chapter eighty-one.³

All licenses
granted
under the
Acts re-
lating to
the retail-
ing of beer
to expire
on the 10th
October in
each year.

¹ See 4 & 5 Wm. IV. c. 85, § 16.

² Now see L. A. 1874, § 18.

³ Cf. 9 Geo. IV. c. 61, § 13. Parts of this section repealed by 38 & 39 Vict. c. 66 are omitted.

THE REVENUE ACT, 1862.

(25 & 26 VICT. c. 22.)

An Act to continue certain Duties of Customs and Inland Revenue for the service of her Majesty, and to grant, alter, and repeal certain other Duties.

[3rd June, 1862.]

* * * * *

So much of any Act as permits the sale of beer, spirits, or wine at fairs or races without an excise license shall be and the same is hereby repealed.¹

12. It shall be lawful for the Commissioners of Inland Revenue, whenever they shall consider it conducive to public convenience, comfort, and order, and with the consent in writing of [one justice] of the peace usually acting at the petty sessions for the petty sessional division within which the place of sale is situate, to authorise any officer of excise to grant to any person who shall be duly authorised to keep a common inn, alehouse, or victualling house, and who shall have taken out the proper excise licenses to sell therein beer, spirits, wine, or tobacco, an occasional license under this Act empowering him to sell the like articles for which he shall have taken out such licenses as aforesaid at any such other place, and for and during such space or period of time, not exceeding three consecutive days at any one time, as the said commissioners shall approve, and as shall be specified in such occasional license; and any person who shall have taken out such occasional license shall not be liable to any penalty or forfeiture whatever by reason or on account of his selling the articles mentioned in the said license during the time and at the place specified therein; Provided that no such occasional license shall authorise the sale of any beer, spirits, or wine, except [from such hour not earlier than sunrise until such hour not later than ten o'clock at night, as may be specified in that behalf in the consent given by the justice for the granting of such occasional license] and

¹ Part of this section providing that it shall not prohibit persons licensed by the excise authorities from selling beer, spirits, or wine at fairs or races is omitted. See 26 & 27 Vict. c. 33, § 21. But now see L. A. 1874, § 18.

provided that the said license shall not protect any such person in the sale of any of the articles herein mentioned, unless he shall at the time of such sale produce such license when requested to do so by any officer of excise, or by any constable or police officer; nor shall any such license be granted for the sale of any of the articles herein mentioned on any Sunday, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving; provided also, that the provisions of this clause shall not extend to Scotland.¹

* * * * *

15. The provisions contained in the twenty-first section of the Act passed in the sixth year of the reign of King George the Fourth, chapter eighty-one, relating to the transfer of excise licenses in the case of the removal of any person from the house or premises at which he shall be licensed under that Act, shall be and the same are hereby extended to licenses granted under the Act passed in the twenty-third year of the reign of her present Majesty, chapter twenty-seven, and the Act passed in the twenty-third and twenty-fourth years of her said Majesty's reign, chapter one hundred and seven respectively: Provided that no license granted under either of the two last-mentioned Acts for the sale of foreign wine by retail to be consumed upon the premises where the same shall be sold shall be transferred by the officers of excise, unless the assignee of such license shall be duly licensed to keep a refreshment house, nor unless he shall produce to such officers a certificate from a justice of the peace acting for the city, borough, town, or place in which the house and premises are situated, that such justice does not object to such transfer being made, and provided that no such license so transferred shall authorise the assignee to carry on the business mentioned therein for a longer period than five weeks from the date of such transfer, unless he shall in the meantime have qualified himself to become the holder of a license of the like kind according to the provisions of the said respective Acts.

Licenses granted under 23 Vict. c. 27, and 23 & 24 Vict. c. 107, may be transferred as other excise licenses in case of the removal of the licensed person.

¹ Consent by one justice only was made sufficient by 26 & 27 Vict. c. 33, § 20. The words in brackets as to hours were inserted in this section by L. A. 1874, § 19, instead of the words "during the hours after sunrise and before sunset."

For removal of doubts as to the privilege of the Free Vintners of the City of London to sell wine without license.

16. Whereas doubts have arisen as to the extent of the privilege of the master, warden, freemen, and commonalty of the Vintners of the City of London to sell wine without taking out an excise license for that purpose: Be it enacted, that no freeman of the said company shall be entitled to sell wine in more than one separate and distinct house or premises at the same time without taking out the proper excise license in that behalf, nor shall any freeman be entitled to exercise the said privilege unless he shall have previously made an entry of the house or premises in which he intends to sell wine with the proper officer of excise, in the manner directed in the fifth section of an Act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, chapter fifty-one.

THE REVENUE ACT, 1863.

(26 & 27 VICT. c. 33.)

An Act for granting to her Majesty certain Duties of Inland Revenue; and to amend the Laws relating to the Inland Revenue.
[29th June, 1863.]

Licensed beerdealers may take out additional license to sell beer by retail not to be consumed on the premises.

1. From and after the passing of this Act any person who, in England or Ireland, shall have taken out an excise license to sell strong beer in casks containing not less than four and a half gallons or in not less than two dozen reputed quart bottles at one time, to be drunk or consumed elsewhere than on his premises, may take out an additional license on payment of the excise duty of *one pound one shilling, and five per cent. thereon*; and the same shall authorise such person to sell beer in any less quantity and in any other manner than as aforesaid, but not to be drunk or consumed on the premises where sold; and such additional license shall be granted without the production of any certificate or *the possession of any other qualification than the license herein first mentioned*.¹

¹ As to the words in italics, see now 33 & 34 Vict. c. 29, § 10, and 43 & 44 Vict. c. 20, § 41.

2. Duty on retail beer licenses taken out by licensed victuallers who do not sell spirits.

* * * * *

18. Every license taken out under the provisions contained in 23 & 24 Vict. cc. 27 and 107, respectively, by a licensed keeper of a refreshment house, to sell therein by retail foreign wine, to be consumed in such house or on the premises belonging thereto, shall authorise and include the sale of sweets and made wines, mead, and metheglin, by retail, to be consumed in the said house or on the said premises.

Licenses granted to refreshment house keepers to retail foreign wine to include the sale of sweets and made wines. Alteration of duty on a victualler's occasional license.

19. In lieu of the duty now chargeable on a victualler's occasional license, specified in schedule (B.) of the Act passed in the twenty-fifth and twenty-sixth years of her Majesty's reign, chapter twenty-two, there shall be charged and paid the following duty; (that is to say,)

For and upon every occasional license to be granted to any person who shall be duly authorised to keep a common inn, alehouse, or victualling house, and licensed to sell therein beer, spirits, wine, or tobacco, to sell the like articles for which he shall be so licensed at any such other place, and for and during such space or period of time not exceeding six days as shall be specified in such occasional license, the sum of two shillings and sixpence for every day so specified as aforesaid for which the same shall be granted:

Provided always, that when any person shall have taken out such an occasional license for six successive days, and shall desire to take out another occasional license for a time in immediate succession, or only separated by the intervention of Sundays and holidays, then the duty chargeable for every license after the first, and for any number of days not exceeding six, shall not exceed ten shillings.

20. Whereas it is expedient to alter and amend the conditions and restrictions upon and under which occasional licenses to sell beer, spirits, or wine may be granted and used, as provided by the thirteenth section of the Act passed in the

Alteration of the law relating to occasional licenses.

twenty-fifth and twenty-sixth years of her Majesty's reign, chapter twenty-two: Be it enacted as follows :

1. That the consent of one justice of the peace, as in the said section mentioned, only, shall be necessary :
2. That the hours during which such occasional license shall authorise the sale of any beer, spirits, or wine shall extend from [such hour not earlier than sunrise until such hour not later than ten o'clock at night, as may be specified in that behalf in the consent given by the justice for the granting of such occasional license] :
3. That upon the occasion of any public dinner or ball it shall be lawful for the person who shall have obtained an occasional license under the provisions of the said Act to sell the said liquors during such hours before or after sunrise or sunset as shall be allowed and specified in that behalf in the consent to be given by the justice of the peace for the granting of such occasional license.¹

21. Section 12 of 25 & 26 Vict. c. 22 not to prohibit persons licensed by the excise from selling beer, spirits, or wine at fairs or races.

* * * * *

Provisions
of former
Acts to
apply to
this Act.

26. All the powers, provisions, clauses, regulations, forfeitures, pains, and penalties contained in or imposed by any Act or Acts relating to any duties of the same kind or description as the several rates or duties granted by this Act respectively, and in force at the time of the passing of this Act, and not hereby expressly repealed, shall respectively be in full force and effect with respect to the said rates and duties by this Act granted respectively, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said last-mentioned rates and duties, and otherwise in relation thereto, so far as the same shall not be

¹ The words in brackets were inserted in this section by L. A. 1874, § 19, instead of the words "sunrise to one hour after sunset."

superseded by and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the rates and duties by this Act granted respectively.

THE INNKEEPERS' LIABILITY ACT, 1863.

(26 & 27 VICT. c. 41.)

An Act to amend the Law respecting the Liability of Innkeepers, and to prevent certain Frauds upon them.

[13th July, 1863.]

Whereas it is expedient to amend the Law concerning the liability of innkeepers in respect of the goods of their guests in manner hereinafter mentioned: Be it therefore enacted, etc., as follows; (that is to say,)

1. No innkeeper shall, after the passing of this Act, be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of thirty pounds, except in the following cases; (that is to say,)

Innkeeper
not to be
liable for
loss, etc.,
beyond
£30 except
in certain
cases.

- (1) Where such goods or property have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ:
- (2) Where such goods or property shall have been deposited expressly for safe custody with such innkeeper:

Provided always, that in the case of such deposit it shall be lawful for such innkeeper, if he think fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same.

Obligation
to receive
property of
guests for
safe
custody.

2. If any innkeeper shall refuse to receive for safe custody, as before mentioned, any goods or property of his guest, or if any such guest shall, through any default of such innkeeper, be unable to deposit such goods or property as aforesaid, such innkeeper shall not be entitled to the benefit of this Act in respect of such goods or property.

Notice of
law, etc.,
to be con-
spicuously
exhibited.

3. Every innkeeper shall cause at least one copy of the first section of this Act, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his inn, and he shall be entitled to the benefit of this Act in respect of such goods or property only as shall be brought to his inn while such copy shall be so exhibited.

Interpre-
tation of
terms.

4. The words and expressions hereinafter contained, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the word "Inn" shall mean any hotel, inn, tavern, public-house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests; and the word "Innkeeper" shall mean the keeper of any such place.

THE REVENUE ACT, 1864.

(27 & 28 VICT. c. 18.)

An Act to grant certain Duties of Customs and Inland Revenue.

[13th May, 1864.]

1. There shall be charged, collected, and paid, for the use of her Majesty, the several duties of excise specified and contained in the schedule marked (B.) to this Act annexed.¹

2. Provisions of former Acts to apply to this Act.

* * * * *

¹ As amended by 38 & 39 Vict. c. 66, and 56 Vict. c. 14.

Excise Licenses.

5. It shall be lawful for the Commissioners of Inland Revenue, whenever they shall consider it necessary for the accommodation of the public, to authorise any officer of excise to grant (upon payment of the respective duties in that behalf mentioned in schedule (B.) to this Act) an occasional license in the several and respective cases herein-after mentioned; (that is to say,) to any person who shall have taken out an excise license under the Acts passed in the twenty-third year of the reign of her Majesty, chapter twenty-seven, and the twenty-third and twenty-fourth years of the same reign, chapter one hundred and seven, respectively, to keep a refreshment house, or to sell by retail in a refreshment house foreign wine to be consumed therein; or an excise license under the Act passed in the fourth and fifth years of the reign of King William the Fourth, chapter eighty-five, to retail beer to be drunk or consumed in or upon the house or premises where sold; or an excise license under the Act passed in the sixth year of the reign of King George the Fourth, chapter eighty-one, to deal in or sell tobacco or snuff; and every such occasional license shall authorise any such person as aforesaid to exercise and carry on the same trade and business as he shall be authorised to carry on by virtue of the license granted under the said Acts respectively as aforesaid at any such place (other than the place for which his original license was granted), and for and during such space or period of time, not exceeding three consecutive days at any one time, as the said Commissioners shall approve, and as shall be specified in such occasional license; provided that the said occasional license shall not protect any such person in the carrying on of any such trade or business as aforesaid unless he shall produce such license whenever requested so to do by any officer of excise, or by any constable or police officer, at the time of exercising such trade or business; and provided also, that the conditions and restrictions contained in the twentieth section of the Act of the twenty-sixth and twenty-seventh years of her Majesty's reign, chapter thirty-three, relating to occasional licenses, shall apply to the occasional licenses to be granted under this Act (except in the case of occasional licenses to sell tobacco or snuff).

Occasional
licenses
may be
granted to
persons
who have
taken out
licenses
under 23
& 24 Vict.
cc. 27, 107
(refresh-
ment
houses and
wine re-
tailers);
under 4 &
5 Wm. IV.
c. 85 (beer
retailers);
and under
6 Geo. IV.
c. 81
(tobacco
retailers).

SCHEDULE (B).—CONTAINING THE DUTIES OF EXCISE GRANTED
BY THIS ACT; THAT IS TO SAY,

	*	*	*	*	*	*
On occasional licenses to refreshment house keepers, wine retailers, beer retailers, and tobacco dealers; (that is to say,)						
For and upon every occasional license to the keeper of a refreshment house, for each and every day for which such license shall be granted ..	£	s.	d.			
				Nil.		
For and upon every occasional license to retail foreign wine to be consumed at the place where sold, for each and every day for which the same shall be granted				0	1	0
For and upon every occasional license to retail beer to be consumed at the place where sold, for each and every day for which the same shall be granted				0	1	0
For and upon every occasional license to deal in or sell tobacco or snuff, for each and every day for which the same shall be granted ¹ ..				0	0	4
	*	*	*	*	*	*

THE PUBLIC HOUSE CLOSING ACT, 1864.

(27 & 28 VICT. c. 64.)

An Act for further regulating the closing of Public Houses and Refreshment Houses within the Metropolitan Police District, the City of London, certain Corporate Boroughs, and other Places. [25th July, 1864.]

*Whereas it is expedient to amend the law relating to the closing of refreshment houses within the metropolitan police district, City of London, certain corporate boroughs, and other places; Be it enacted, etc.*²

¹ The rest of this schedule was repealed by 38 & 39 Vict. c. 66.

² Preamble repealed 56 Vict. c. 14. The whole of this Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold by retail, is repealed by L. A. 1872.

1. This Act may be cited for all purposes as the "Public Short title. House Closing Act, 1864."

2. *Limits of Act.*¹

3. *Definition of corporate borough, etc.*²

4. "Refreshment house" shall in this Act have the same Definition meaning as it has in the Act passed in the session holden in of refresh- the twenty-third year of the reign of her present Majesty, ment houses, etc. chapter twenty-seven, intituled "An Act for granting to her Majesty certain duties on Wine Licenses and Refreshment Houses, and for regulating the licensing of Refreshment Houses and the granting of Wine Licenses:"

"Exciseable liquor" shall mean any spirits, foreign wine, beer, cider, sweets, or made wines, as defined by the Acts relating to the excise.

5. Save as hereinafter mentioned, no licensed victualler As to the closing of public houses and refreshment houses. within the limits of this Act shall sell or expose for sale or open or keep open any house, room, garden, or other place for the sale or consumption of exciseable liquors or any article whatsoever between the [hour of the night or morning at which premises licensed for the sale of intoxicating liquors by retail situate in the same place as such refreshment house are required to be closed]³ and four o'clock in the morning.

No person within the limits of this Act shall open or keep open any refreshment house, or sell or expose for sale or consumption in any refreshment house, any refreshments or any article whatsoever between the above-mentioned hours.

Any person acting in contravention of this section shall be liable to a penalty not exceeding five pounds, to be recovered in a summary manner as provided by the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three.

Nothing herein contained shall preclude a licensed

¹ Repealed 38 & 39 Vict. c. 66. By L. A. 1874, § 11, this Act now extends to the whole of England.

² Repealed 38 & 39 Vict. c. 66.

³ The words in brackets were inserted by L. A. 1874, § 11, instead of the "hours of one."

victualler from selling exciseable liquors to or allowing the same to be consumed by persons lodging in his house, or the keeper of a refreshment house from selling refreshments to or allowing the same to be consumed by persons lodging in his house, within the above-mentioned hours.

Nothing herein contained shall *authorise a licensed victualler to sell exciseable liquors on any Sunday, Christmas Day, Good Friday, or day appointed for public fast or thanksgiving, otherwise than during the times at which he is now authorised by law to sell the same, or authorise any other person to sell exciseable liquors*, keep open any refreshment house, or sell refreshments otherwise than at the times and upon the conditions prescribed by the Acts of Parliament in that behalf made.¹

6. Repealed 38 & 39 Vict. c. 66.

Occasional
license.

7. If any *licensed victualler or keeper of a refreshment house as aforesaid within the limits of this Act applies to the local authority hereinafter mentioned for a license exempting him from the provisions of this Act on any special occasion or occasions*, it shall be lawful for the local authority, if in its discretion it thinks fit so to do, to grant to the applicant an occasional license exempting him from the provisions of this Act during certain hours, and on a special occasion or occasions to be specified in the license; and no *licensed victualler or keeper of a refreshment house to whom an occasional license has been granted under this Act shall be subject to any penalty for a contravention of this Act during the time to which his occasional license extends, but he shall not be exempted by such occasional license from any penalty to which he may be subject under any other Act of Parliament.*¹

Definition
of "local
authority."

8. The following persons and bodies of persons shall be deemed to be local authorities capable of granting occasional licenses for the purposes of this Act; that is to say,

- (1) In the metropolitan police district, the Commissioner of Police for the metropolis, subject to the approbation of one of her Majesty's principal Secretaries of State:

¹ Words in italics repealed 56 Vict. c. 14.

- (2) In the city of London and the liberties thereof, the Commissioner of City Police, subject to the approbation of the Lord Mayor of the said city.¹

* * * * *

9. *As to adoption of Act by corporate borough.*²

10. Nothing herein contained shall apply to the sale at a railway station between the [hour of the night or morning at which premises for the sale of intoxicating liquors by retail, situate in the same place as such refreshment house, are required to be closed], and four o'clock in the morning of *exciseable liquors* or refreshments to persons arriving at or departing from such station by railroad.³

THE PUBLIC HOUSE CLOSING ACT, 1865.

(28 & 29 VICT. C. 77.)

An Act to amend the Act of the Twenty-seventh and Twenty-eighth Victoria, Chapter Sixty-four, commonly called "The Public House Closing Act, 1864." [29th June, 1865.]

*Whereas it is expedient to amend "The Public House Closing Act, 1864:" Be it enacted as follows:*⁴

1. This Act may be cited for all purposes as the "Public Short title. House Closing Act, 1865."

2. It shall be lawful for the licensing justices at the time of granting or renewing any license, upon the production of such evidence as they shall deem sufficient to shew that it is Power to justices to grant licenses to

¹ This section was varied as to who should be the "Local Authority" by 28 & 29 Vict. c. 77, § 5, which see *post*. The latter part of this section is repealed by 38 & 39 Vict. c. 66.

² Repealed 38 & 39 Vict. c. 66.

³ The words in brackets are inserted by L. A. 1874, § 11, in place of "hours of one." As to sales of intoxicating liquors at railway stations in closed hours, see now L. A. 1874, § 10.

⁴ Preamble repealed by 56 Vict. c. 14. Whole Act repealed, except as to refreshment houses in which intoxicating liquors are not sold by retail, L. A. 1872.

refreshment house
keepers
suspending
operation
of recited
Act.

necessary or desirable, for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, if, in the discretion of such justices, they shall think fit, to grant to any *licensed victualler or keeper* of a refreshment house whose place of business is in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, a license exempting him from the provisions of the hereinbefore-mentioned Act between the hours of two and four o'clock in the morning, or any part of such hours, during such days, times, or hours, as shall be specified in such license; and no *licensed victualler or keeper* of a refreshment house to whom such license has been granted under this Act shall be subject to any penalty for a contravention of the hereinbefore-mentioned Act during the days or times to which such license extends, but he shall not be exempted by such license from any penalty to which he may be subject under any other Act of Parliament; provided that a printed notice stating the days and special hours during which and the class of persons for whom the house is open under such licenses shall be affixed in a conspicuous position outside the house.

Power to
withdraw
such
license.

3. It shall be lawful for such justices, from time to time, as and when it may seem fit to them, either to withdraw such license altogether, or to alter, vary, or amend the same in such manner as such justices may deem necessary or expedient.

4. *Act to be in force in certain districts, &c.*¹

Justices of
the peace
to grant
licenses.

5. *So much of the eighth clause of the said recited Act as defines the local authority to be a commissioner, superintendent, or other chief officer of police shall be repealed, and instead thereof the local authority shall be, in any district, city, or town where petty sessions are held, except in the metropolitan police district, two justices of the peace sitting in petty sessions, and in any other district, city, or town, two justices of the peace acting in the district, city, or town.*²

Act to be
construed
with
recited Act.

6. This Act shall be deemed, construed, and taken as part of the said hereinbefore-mentioned Act.

¹ Repealed 38 & 39 Vict. c. 66.

² Words in italics repealed by 56 Vict. c. 14.

THE REVENUE ACT, 1867.

(30 & 31 VICT. c. 90.)

An Act to alter certain Duties, and to amend the Laws relating to the Inland Revenue. [12th August, 1867.]

17. If any person shall solicit, take, or receive any order for spirits, wine, or other article, for the dealing in, retailing, or selling whereof an excise license is by law required, without having in force a proper excise license authorising him so to do, he shall forfeit the penalty imposed by law upon a person dealing in, retailing, or selling such article without having an excise license in force authorising him so to do; and in any case in which the place of business or residence of the offender shall not be known to the officer of excise who shall exhibit any information for the recovery of such penalty as aforesaid, or, if known, shall be out of the United Kingdom, it shall be sufficient service of the notice and summons required to be given to a defendant by any law of excise if the same be left at the house or place where the offender shall have solicited, taken, or received any such order as aforesaid, addressed to such offender: Provided always that nothing herein contained shall be deemed to apply to the sale of any spirits or foreign wine while the same shall be and remain in the warehouse or warehouses in which the same shall have been deposited, lodged, or secured according to law, before payment of duty upon the importation thereof, where such spirits or foreign wine shall be sold in a quantity not less than one hundred gallons at one time, or to impose a penalty upon a bonâ fide traveller taking orders for goods which his employer is duly licensed to deal in or sell.

Penalty upon un-licensed persons (not being travellers for licensed persons) soliciting orders for spirits, wine, etc.

THE WINE AND BEERHOUSE ACT, 1869.

(32 & 33 VICT. c. 27.)

An Act to amend the Law for Licensing Beerhouses, and to make Certain Alterations with respect to the Sale by Retail of Beer, Cider, and Wine. [12th July, 1869.]

Whereas by the Acts relating to the general sale of beer and cider by retail in England; (that is to say,)

- (1) *An Act of the session of the last year of the reign of King George the Fourth and the first year of the reign of King William the Fourth, chapter sixty-four, intituled "An Act to permit the general sale of beer and cider by retail in England ;"*
- (2) *An Act of the session of the fourth and fifth years of the reign of King William the Fourth, chapter eighty-five, intituled "An Act to amend an Act passed in the first year of his present Majesty, to permit the general sale of beer and cider by retail in England ;"*
- (3) *An Act of the session of the third and fourth years of the reign of her present Majesty, chapter sixty-one, intituled "An Act to amend the Acts relating to the general sale of beer and cider by retail in England ;"*
- (4) *An Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter twenty-one, intituled "An Act for granting to her Majesty certain duties of excise and stamps ;"*

provision is made for the grant of licenses by the excise for the sale by retail of beer and cider upon the terms and conditions therein specified :

And whereas by an Act of the session of the twenty-sixth and twenty-seventh years of the reign of her present Majesty, chapter thirty-three, intituled "An Act for granting to her Majesty certain duties of inland revenue, and to amend the laws relating to the inland revenue," it is enacted, that any person who after the passing of that Act has taken out an excise license to sell strong beer in casks containing not less than four and a half gallons, or in not less than two dozen reputed quart bottles, at one time, to be drunk or consumed elsewhere than on his premises, may take out an additional license on payment of the excise duties therein mentioned, and that the same shall authorise such person to sell beer in any less quantity and in any other manner than as afore-said, but not to be drunk or consumed on the premises where sold, and that such additional license shall be granted without the production of any certificate, or the possession of any other qualification than the license therein first mentioned : And whereas

provision is made for the grant of licenses by the excise for refreshment houses and for the sale of wine by retail, and for other purposes, by an Act of the session of the twenty-third year of the reign of her present Majesty, chapter twenty-seven, intituled

*"An Act for granting to her Majesty certain duties on wine licenses and refreshment houses, and for regulating the licensing of refreshment houses, and the granting of wine licenses:" And whereas it is expedient to make better provision with regard to the granting of the licenses herein-before mentioned, and for regulating the houses and shops in which beer, cider, and wine, are sold by retail: Be it enacted, etc., as follows:*¹

1. This Act shall not apply to Scotland or Ireland.

Appli-
cation of
Act.

2. For the purposes of this Act the term "beer" shall include ale and porter, and the term "cider" shall include perry.

Definition
of "beer"
and
"cider."

3. This Act may be cited as "The Wine and Beerhouse Act, 1869."

Short title.

4. . . . No license or renewal of a license for the sale by retail of beer, cider, or wine, or any of such articles, under the provisions of any of the said recited Acts shall (save as is in this Act otherwise provided) be granted except upon the production and in pursuance of the authority of a certificate granted under this Act.

Retail
licenses not
to be
granted
without
certificate
granted
under this
Act.

Any license granted or renewed in contravention of this enactment shall be void.²

5. Certificates under this Act shall be granted by the justices assembled at the general annual licensing meeting held in pursuance of an Act of the session of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled "An Act to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England," or at some adjournment of such meeting held in pursuance of the said last-mentioned Act: *Provided that certificates for licenses under the said Acts of the twenty-third year of the reign of her present Majesty, of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, and of the twenty-sixth and twenty-seventh years of her present Majesty, may be granted by justices at the special sessions for transferring licenses.*³

Certificates
by whom
to be
granted.
9 Geo. IV.
c. 61.

¹ Preamble repealed, 56 & 57 Vict. c. 14.

² Part repealed, 56 & 57 Vict. c. 54.

³ Words in italics repealed, 33 & 34 Vict. c. 29, § 4.

Form of
certificate.

6. A certificate under this Act shall specify the name and address of the person thereby authorised to receive a license, the description of license or licenses authorised to be granted to him, and whether such license or licenses is or are to be granted for the sale of beer, cider, or wine to be consumed on or off the premises, and the situation of the house or shop in respect of which such grant is authorised. It shall be in force for one year from the date of its being granted, *and shall be in the form given in the first schedule hereto, or as near thereto as circumstances admit.*¹

Notice of
appli-
cation.

7. Every person intending to apply to the justices for a certificate under this Act shall, twenty-one days at least before he applies, give notice in writing of his intention to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is situate, and to [the superintendent of police of the district], and shall in such notice set forth his name and address, and a description of the license or licenses for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made; and in the case of a house or shop not theretofore licensed for the sale by retail of beer, cider, or wine, such person shall also within the space of twenty-eight days before such application is made cause a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or, if there be no such church or chapel, on some other public and conspicuous place within such parish or place.

Where application is made to the justices for the grant of a certificate under this Act by way of renewal only, notice in pursuance of this section shall not be requisite.²

Provisions
of 9 Geo.

8. All the provisions of the said Act of the ninth year of the reign of King George the Fourth as to the terms upon

¹ Form of certificate repealed L. A. 1872.

² The words in brackets were substituted for "some constable or peace officer acting within such parish, township, or place" by 33 & 34 Vict. c. 29, § 4. The notice may be served by registered letter through the post: *ibid.*

which, and the manner in which, and the persons by whom, grants of licenses are to be made by the justices at the said general annual licensing meeting, and as to appeal from any act of any justice, shall, so far as may be, have effect with regard to grants of certificates under this Act, subject to this qualification, that no application for a certificate under this Act in respect of a license to sell by retail *beer*, *cider*, or *wine* not to be consumed on the premises shall be refused, except upon one or more of the following grounds, viz.:—

IV. c. 61,
to apply to
grants of
certificates
under this
Act.

- (1) That the applicant has failed to produce satisfactory evidence of good character :
- (2) That the house or shop in respect of which a license is sought, or any adjacent house or shop owned or occupied by the person applying for a license, is of a disorderly character or frequented by thieves, prostitutes, or persons of bad character :
- (3) That the applicant having previously held a license for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such license, or from selling any of the said articles :
- (4) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required :

Where an application for any such last-mentioned certificate is refused on the ground that the house in respect of which he applies is not duly qualified as by law is required, the justices shall specify in writing to the applicant the grounds of their decision.¹

9. *A certificate may be transferred to a new tenant or occupant at petty sessions.*²

¹ The word "beer" in this section is repealed by 56 & 57 Vict. c. 54. So much of this section as incorporates or applies any repealed enactment is repealed by 37 & 38 Vict. c. 40, § 27. The section is also repealed so far as the qualification contained in it relates to grants of certificates for a wholesale beer dealer's additional retail "off" license, by 43 Vict. c. 6. The justices have now an absolute discretion in regard to all certificates for all "off" licenses for the retail sale of beer, see 45 & 46 Vict. c. 34.

² Repealed, 33 & 34 Vict. c. 29, § 4.

10. *As to renewal of licenses in force in Middlesex and Surrey at passing of this Act.*¹

Penalty on
forgery of
certificate.

11. If any person forge, or tender, knowing the same to have been forged, any certificate authorised to be granted by this Act, he shall, on summary conviction before two or more justices, be liable to a penalty not exceeding twenty pounds, or, in the discretion of the justices before whom he is tried, to imprisonment for any period not exceeding six months, with or without hard labour. Any license granted in pursuance of such forged certificate shall be void, and any person making use of such forged certificate, knowing the same to have been forged, shall be disqualified from obtaining at any time thereafter a license for the sale of beer, cider, or wine by retail under any of the said recited Acts.

12. *Constables may enter houses licensed to sell beer, etc., not to be consumed on the premises.*²

13. *Proof of money passing not necessary to prove sale.*³

14. *In cases of illegal sale on neighbouring premises, evidence need not be given of ownership of such premises.*²

15. *Penalty for suffering beer or cider to be drunk on premises during closed hours.*²

16. *Persons (not servants or inmates) present in houses open at illegal hours to be liable to penalties.*²

17. *In order to constitute a second or third offence, previous offence need not have been committed within a limited period.*²

18. *As to management of houses licensed for sale of table beer.*²

19. Where, on the first of May, one thousand eight hundred and sixty-nine, a license under any of the said recited Acts is in force with respect to any house or shop for the sale by retail therein of beer, cider, or wine to be consumed on the premises, it shall not be lawful for the

Existing
licenses to
be renewed,
except in
certain
cases.

¹ Repealed by 46 & 47 Vict. c. 39.

² Repealed, L. A. 1872.

³ Repealed, L. A. 1872. See now § 62 of that Act.

justices to refuse an application for a certificate for the sale of beer, cider, or wine to be consumed on the premises in respect of such house or shop, except upon one or more of the grounds upon which an application for a certificate under this Act in respect of a license for the sale of beer, cider, or wine, not to be consumed on the premises, may be refused, in accordance with this Act. . . .¹

20. Nothing in this Act contained shall be deemed to affect—

Nothing
to affect
privileges
and rights
herein
named.

(1) The privileges heretofore enjoyed by any university in England, or the chancellor, masters, and scholars of the same, or their successors :

(2) The privileges heretofore enjoyed by the masters, wardens, freemen, and commonalty of the vintners of the city of London, except as to those freemen of the said vintners who have obtained their freedom by redemption only :

(3) The privileges heretofore enjoyed by the mayor or burgesses of the city of St. Albans in the county of Hertford, or their successors :

(4) The right of any person who is duly authorised by justices of the peace to keep a common inn, ale-house, or victualling house to take out any excise license :

(5) The grant of any occasional license, or the power of any person duly authorised by the excise to sell beer, spirits, or wine at any fair or public races.²

21. *Repeal of parts of Acts set forth in second schedule.*³

22. *Act to be in force for two years.*⁴

*First Schedule—Form of Certificate.*⁵

¹ The latter portion of this section relating to convictions and the recording thereof upon licenses is repealed, L. A. 1872. See now L. A. 1874, § 13. By 33 & 34 Vict. c. 29, § 7, this section applies to licenses in force on the 1st of May, 1869, and since renewed from time to time, whether held by the same person or transferred to any other person or persons; see *post*.

² See *ante*, p. 278.

³ Repealed 46 & 47 Vict. c. 39.

⁴ Repealed L. A. 1872.

⁵ Repealed 56 & 57 Vict. c. 54.

Second Schedule—Acts repealed.

11 Geo. IV. 1 Wm. IV. c. 64; so much of section 2 as requires the grant of an excise license under the provisions of the Act to be made within ten days after application has been made for same. 4 & 5 Wm. IV. c. 85; sections 2, 3, 8, 9. 3 & 4 Vict. c. 61, sections 2, 3; so much of section 4 as enacts that in any extra-parochial place or places where no rates are made or collected for the relief of the poor a person applying for a license shall produce to and deposit and leave with the proper officer of excise granting such license a certificate in writing, signed by two inhabitant householders of the township or place, certifying that the party applying is the real resident in and occupier of the dwelling-house sought to be licensed, and also certifying the true and real annual value of the same with the premises occupied therewith, according to the best of their judgment and belief; sections 5 and 6. 23 Vict. c. 27; sections 13, 14, and 15. 24 & 25 Vict. c. 21; so much of section 3 as renders it unnecessary that the person applying for a license shall produce any certificate.¹

THE HIGH CONSTABLES ACT, 1869.

(32 & 33 VICT. c. 47.)

An Act to provide for the discharge of the duties heretofore performed by High Constables, and for the abolition of such office, with certain exceptions. [2nd August, 1869.]

Inter-
pre-
ta-
tion of
terms.

1. For the purposes of this Act the word "high constable" shall include any constable of any hundred or other like district, and any officer discharging the duties usually performed by high constables by whatever name such officer shall be called; and the word "county" shall include any riding, division, liberty, and place having separate quarter sessions of the peace.

* * * * *

¹ Repealed 46 & 47 Vict. c. 39; 56 & 57 Vict. c. 54.

3. It shall be the duty of the clerk to the justices of the peace in each petty sessional division, other than those which are either wholly or partly within the metropolitan police district or the city of London, to send by post to the proper parties in such division all notices of the holding of special or other sessions, of days of appeal, and of any other matter or thing (except such as relate to claims against the hundred or other like district, or to parliamentary or municipal elections, or the registration of electors), of which notices are now by law or custom served upon or sent to any parochial officer or other person by high constables, and no precept or notice to perform any such duty in any such division shall hereafter be issued to any high constable, after the passing of this Act.

How
notices are
to be sent.

THE WINE AND BEERHOUSE ACT AMENDMENT ACT, 1870.

(33 & 34 VICT. c. 29.)

*An Act to amend and continue "The Wine and Beerhouse Act, 1869."*¹ [14th July, 1870.]

1. This Act may be cited as "The Wine and Beerhouse Act Amendment Act, 1870." Short title.

2. This Act shall not extend to Scotland or Ireland.

Extent of
Act.

3. In this Act the words "the principal Act" mean the Wine and Beerhouse Act, 1869, and the word "sweets" includes sweets, made wines, mead, and metheglin.

Interpre-
tation of
terms.

4. The provisions of the principal Act, with reference to the grant, duration, and transmission of certificates, shall be amended as follows; (that is to say,)

Amend-
ment of
provisions
of principal
Act as to
grants,
durations,
and trans-

(1) The seventh section of the principal Act shall be read as if for the words "constable or peace officer acting within such parish, township, or place,"

¹ Preamble repealed 56 & 57 Vict. c. 54.

missions of
certificates.

there were substituted the words "the superintendent of police of the district," and the notice required by that section to be given to any overseer or constable may be served by a registered letter through the post :

- (2) Where a certificate is now required to be signed by a majority of justices, it shall be sufficient if, instead of such signature, the concurrence of such majority be signified by means of an impression from an official seal or stamp, in such form as the justices may direct, affixed in the presence of the justices in sessions assembled, and verified in the case of each certificate by the signature of their clerk. Any seal purporting to be so affixed and verified shall be received in evidence without further proof; and if any unauthorised person imitate or affix an impression of such seal on any certificate or imitation of a certificate, or knowingly use a certificate or imitation of a certificate falsely purporting to be sealed in pursuance of this section, he shall be guilty of forgery :
- (3) For every certificate granted by way of renewal under the principal Act or this Act, there shall be payable to the clerk of the justices the sum of four shillings for all matters to be done by such clerk, and one shilling for the constable or officer for service of notices; and if any clerk of justices demand or receive any greater or further fee or payment in respect of any such renewal, whether for himself or for any other officer or person, he shall, upon summary conviction, be liable to a penalty of five pounds :
- (4) It shall be in the discretion of the justices to whom an application for a transfer is made, either to allow or refuse the application, or to adjourn the consideration thereof :
- (5) *The proviso of the fifth section of the principal Act and the ninth section of the principal Act shall be repealed, and, subject to the provisions of this section, all the provisions of the Act of the ninth year of George the Fourth, chapter sixty-one, and Acts*

amending the same, relating to the time for which justices' licenses are to be in force, and relating to the fees payable for such licenses, and relating to the transfer, removal, and transmission of such licenses, and the grant of licenses upon assignment, death, change of occupancy, or other contingency, and relating to copies of such licenses, and relating to grants or transfers of such licenses without the attendance of an applicant who is hindered by sickness, infirmity, or other reasonable cause, shall have effect with regard to certificates granted or to be granted under the principal Act and this Act.¹

5. *Provision as to convictions.*²

6. *Provision as to certain offences.*²

7. The nineteenth section of the principal Act shall extend to licenses granted by way of renewal from time to time of licenses in force on the 1st day of May, 1869, whether such licenses continue to be held by the same person or have been or may be transferred to any other person or persons. . . .³

8. *Regulation as to closing of houses, etc.*²

9. *Avoidance of licenses upon refusal to renew certificate.*²

10. A certificate for an additional license to the holder of a strong beer dealer's license to retail beer under the provisions of the twenty-sixth and twenty-seventh of her Majesty, chapter thirty-three, shall not *after the passing of this Act*,⁴ except by way of renewal from time to time of a certificate in force at the time of the passing of this Act, be granted unless upon the like proof of qualification according to rating as is required in the case of licenses to retail beer for consumption on the premises under the

Provision
as to
existing
licenses.

As to beer
dealer's
additional
retail
license.

¹ Words in italics repealed 46 & 47 Vict. c. 39.

² Repealed L. A. 1872.

³ The rest of this section, relating to records of convictions, was repealed by L. A. 1872.

⁴ Words in italics repealed by 56 & 57 Vict. c. 54.

provisions of the Acts recited in the principal Act for permitting the general sale of beer and cider by retail in England.

Power to justices to postpone applications for renewals.

11. Where any applicant for the grant or renewal of a certificate has, through inadvertence or misadventure, failed to comply with any of the preliminary requirements of the principal Act or this Act, or any Act incorporated therewith, the justices may, if they shall so think fit, and upon such terms as they think proper, postpone the consideration of the application to an adjourned meeting, and if at such adjourned meeting the justices shall be satisfied that such terms have been complied with, they may proceed to grant or withhold such certificate as if the preliminary requirements of the principal Act had been complied with.

12. *Limit of mitigation of penalties.*¹

13. *Houses licensed to retail sweets may be entered by constables.*¹

Persons convicted of felony disqualified from selling spirits by retail.

14. Every person convicted of felony shall for ever be disqualified from selling spirits by retail, and no license to sell spirits by retail shall be granted to any person who shall have been so convicted as aforesaid; and if any person shall, after having been so convicted as aforesaid, take out or have any license to sell spirits by retail, the same shall be void to all intents and purposes; and every person who, after being so convicted as aforesaid, shall sell any spirits by retail in any manner whatever shall incur the penalty for doing so without a license.

15. *Visitation of suspected houses.*²

16. *Repeal of 5 Geo. IV. c. 54, § 6; 6 Geo. IV. c. 81, § 2; 13 & 14 Vict. c. 67, § 6, so far as they relate to brewers' retail licenses.*²

17. *Duration of the principal Act and of this Act.*¹

¹ Repealed L. A. 1872.

² Repealed by 46 & 47 Vict. c. 39.

THE BEERHOUSE ACT, 1870.

(33 & 34 VICT. c. 111.)

An Act to Make provision in relation to certain Beerhouses not duly qualified according to Law. [10th August, 1870.]

*Whereas in misapprehension of the provisions of an Act passed in the third and fourth years of the reign of her present Majesty, chapter sixty-one, licenses and certificates for the sale of beer and cider have been granted in respect of houses not duly qualified as by the first section of the said Act is required: Be it enacted as follows:*¹

1. A dwelling house, if situated within a township for which a separate poor rate is or can be made, or within a hamlet for which a separate poor rate is or can be made, shall, for the purpose of determining by reference to population, in accordance with the first and fifteenth sections respectively of the said Act, the rating qualification and the closing hour applicable to such house as a house for the sale of beer or cider, be deemed to be within such township or hamlet, as the case may be, and not within any larger area of which such township or hamlet forms a part.²

Rating qualification and closing hours of beerhouses within townships where separate poor rate is or can be made.

2. This Act shall apply exclusively to houses in respect of which licenses under Acts to permit the general sale of beer and cider by retail in England are in force at the time of the passing of this Act, and to such houses so long only as such licenses or any renewal thereof shall remain in force.

Restricted application of Act.

3. This Act may be cited for all purposes as "The Beer-house Act, 1870."

Short title.

¹ Preamble repealed 56 & 57 Vict. c. 54.

² This section is repealed so far as it relates to § 15 of 3 & 4 Vict. c. 61, and the closing hour; see 46 & 47 Vict. c. 39.

THE PREVENTION OF CRIMES ACT, 1871.

(34 & 35 VICT. c. 112.)

An Act for the more effectual Prevention of Crime.

[21st August, 1871.]

* * * * *

Penalty for
harbouring
thieves, etc.

10. Every person who occupies or keeps any lodging-house, beerhouse, public-house, or other house or place where intoxicating liquors are sold, or any place of public entertainment or public resort, and knowingly lodges or knowingly harbours thieves or reputed thieves, or knowingly permits or knowingly suffers them to meet or assemble therein, or knowingly allows the deposit of goods therein having reasonable cause for believing them to be stolen, shall be guilty of an offence against this Act, and be liable to a penalty not exceeding ten pounds, and in default of payment to be imprisoned for a period not exceeding four months, with or without hard labour, and the Court before which he is brought may, if it think fit, in addition to or in lieu of any penalty, require him to enter into recognisances, with or without sureties, and if in Scotland to find caution, for keeping the peace or being of good behaviour during twelve months: Provided that

- (1) No person shall be imprisoned for not finding sureties or cautioners in pursuance of this section for a longer period than three months; and
- (2) The security required from a surety or cautioner shall not exceed twenty pounds:

And any license for the sale of any intoxicating liquors, or for keeping any place of public entertainment or public resort, which has been granted to the occupier or keeper of any such house or place as aforesaid, may, in the discretion of the Court, be forfeited on his first conviction of an offence under this section, and on his second conviction for such an offence his license shall be forfeited and he shall be disqualified for a period of two years from receiving any such license; moreover, where two convictions under this section have taken place within a period of three years in respect of

the same premises, whether the persons convicted were or were not the same, the Court shall direct that for a term not exceeding one year from the date of the last of such convictions no such license as aforesaid shall be granted to any person whatever in respect of such premises; and any license granted in contravention of this section shall be void.

Any licensed person brought before a Court in pursuance of this section shall produce his license for examination, and if such license is forfeited shall deliver it up altogether, and if such person wilfully neglects or refuses to produce his license he shall, in addition to any other penalty under this section, be liable on summary conviction to a penalty not exceeding five pounds. . . .¹

17. Legal proceedings to be taken before Courts of summary jurisdiction.

THE METALLIFEROUS MINES REGULATION ACT, 1872.

(35 & 36 VICT. C. 77.)

An Act to Consolidate and Amend the Law relating to Metalliferous Mines. [10th August, 1872.]

Preliminary.

* * * * *

3. This Act shall apply to every mine of whatever description other than a mine to which the Coal Mines Regulation Act, 1872, applies.² Appli-
cation of
Act.

* * * * *

¹ The latter portion of this section giving a right of appeal to a person convicted is repealed by 39 & 40 Vict. c. 20, § 5 of which now provides that:—Any person convicted under § 10 of the Prevention of Crimes Act, 1871, shall have a right to appeal against such conviction in the same manner in all respects as a person may appeal who feels aggrieved by a conviction made by a Court of summary jurisdiction under the licensing Act, 1872, and the provisions of that Act as to such appeals, and any Act amending the same, shall apply.

² That Act (35 & 36 Vict. c. 76) now repealed, applied to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay (§ 3): see now 50 & 51 Vict. c. 58, *post*, p. 488.

Wages.

Prohibition
of payment
of wages at
public-
houses, etc.

9. No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public-house, beershop, or place for the sale of any spirits, wine, beer, cider, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section shall be guilty of an offence against this Act, and in the event of any such contravention or non-compliance in the case of any mine by any person whomsoever the owner and agent of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

* * * * *

Penalties.

Penalty for
offences
against
Act.

31. Every person employed in or about a mine, other than owner or agent, who is guilty of any act or omission which in the case of an owner or agent would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is an owner or agent, twenty pounds, and if he is any other person two pounds, for each offence; and if an inspector has given written notice of any such offence, to a further penalty not exceeding one pound for every day after such notice that such offence continues to be committed.

* * * * *

Summary
proceed-
ings for
offences,
penalties,
etc.

33. All offences and penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a Court of summary jurisdiction.

The "Court of summary jurisdiction," when hearing and determining an information or complaint, shall be constituted—

- (a) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace and sitting alone or with others at some Court or other place appointed for the administration of justice.

* * * * *

34. In every part of the United Kingdom the following General provisions as to summary proceedings. provisions shall have effect :

(1) Any complaint or information made or laid in pursuance of this Act, shall be made or laid within three months from the time when the matter of such complaint or information respectively arose :

(2) The description of any offence under this Act in the words of this Act shall be sufficient in law :

(3) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant :

(4) The owner or agent may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person :

(5) The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

35. No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State ; and in the case of any offence of which the owner or agent of a mine is not guilty, if he proves that he had taken all reasonable means Prosecution for offences.

to prevent the commission thereof, an inspector shall not institute any prosecution against such owner or agent, if satisfied that he had taken such reasonable means as aforesaid.

* * * * *

THE LICENSING ACT, 1872.

(35 & 36 VICT. [c. 94.]

An Act for regulating the Sale of Intoxicating Liquors.

[10th August, 1872.]

Whereas it is expedient to amend the law for the sale by retail of intoxicating liquors, and the regulation of public houses and other places in which intoxicating liquors are sold, and to make further provision in respect of the grant of new licenses for the sale of intoxicating liquors, and the better prevention of drunkenness.

*Be it enacted, etc.*¹

Preliminary.

- | | |
|----------------|--|
| Short title. | 1. This Act may be cited as "The Licensing Act, 1872." |
| Extent of Act. | 2. This Act shall not extend to Scotland. |

Illicit Sales.

- | | |
|--|---|
| Prohibition of sale of intoxicating liquors without license. | 3. No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorised by his license to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed to sell by retail, or selling or exposing for sale any intoxicating liquor at any place where he is not authorised by his license to sell the same, shall be subject to the following penalties ; that is to say, |
|--|---|

- (1) For the first offence he shall be liable to a penalty

¹ Preamble repealed, 56 & 57 Vict. c. 54.

not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month :

- (2) For the second offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding three months, and he may, by order of the Court by which he is tried, be disqualified for any term not exceeding five years from holding any license for the sale of intoxicating liquors :
- (3) For the third and any subsequent offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any term not exceeding six months, and may by order of the Court by which he is tried be disqualified for any term of years or for ever from holding any license for the sale of intoxicating liquors :

In addition to any other penalty imposed by this section any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a license, forfeit such license, and in the case of a conviction for any offence under this section, the court may, if it thinks expedient so to do, declare all intoxicating liquor found in the possession of any such person as last aforesaid, and the vessels containing such liquor, to be forfeited.

No penalty shall be incurred under this section by the heirs, executors, administrators, or assigns of any licensed person who dies before the expiration of his license, or by the trustee of any licensed person who is adjudged a bankrupt or whose affairs are liquidated by arrangement before the expiration of his license in respect of the sale or exposure for sale of any intoxicating liquor, so that such sale or exposure for sale be made on the premises specified in such license, and take place prior to the special session then next ensuing, or (if such special session be holden within fourteen days next after the death of the said person or the appointment of a trustee in the case of his bankruptcy, or the liquidation of his affairs by arrangement) take place prior to the special session holden next after such special session as last aforesaid.

Occupier of
unlicensed
premises
liable for
sale of
liquor.

4. The occupier of any unlicensed premises on which any intoxicating liquor is sold, or if such premises are occupied by more than one person, every occupier thereof, shall, if it be proved that he was privy or consenting to the sale, be subject to the penalties imposed upon persons for the sale of intoxicating liquors without license.

Seller
liable for
drinking on
premises
contrary to
license.

5. If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same to be drunk on the premises drink such liquor on the premises where the same is sold, or on any highway adjoining or near such premises, the seller of such liquor shall, if it shall appear that such drinking was with his privity or consent, be subject to the following penalties; (that is to say,)

For the first offence he shall be liable to a penalty not exceeding ten pounds:

For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds.

For the purposes of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor or under his control, or used by his permission.

Any conviction for an offence under this section shall be recorded on the license of the person convicted.¹

Evasion of
law as to
drinking on
premises
contrary to
license.

6. If any person having a license to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever, belonging to such licensed person, or hired, used, or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and

¹ Words in italics repealed, L. A. 1874, see §§ 13, 33.

consent, and such licensed person shall be punished accordingly in manner provided by this Act.

*Any conviction for an offence under this section shall be recorded on the license of the person convicted.*¹

In any proceeding under this section it shall not be necessary to prove that the premises or place or places to which such liquor is taken to be drunk belonged to, or were hired, used, or occupied by the seller, if proof be given to the satisfaction of the court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his license.

7. Every holder of a license who sells or allows any person to sell, to be consumed on the premises, any description of spirits to any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.

Sale of spirits to children.

8. Every person shall sell all intoxicating liquor which is sold by retail and not in cask or bottle, and is not sold in a quantity less than half a pint, in measures marked according to the imperial standards.

Sale to be by standard measure.

Every person who acts or suffers any person under his control or in his employment to act in contravention of this section shall be liable to a penalty not exceeding, for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds, and shall also be liable to forfeit the illegal measure in which the liquor was sold.

9. Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment house, shall be liable to a penalty not exceeding ten pounds for every day during which such communication remains open.

Penalty on internal communication between licensed premises and house of public resort.

In addition to any penalty imposed by this section any person convicted of an offence under this section shall, if he be the holder of a license, forfeit such license.

¹ Words in italics repealed, L. A. 1874, see §§ 13, 33.

Penalty on
illicit
storing of
liquor.

10. If any licensed person has in his possession on the premises in respect of which his license is granted, any description of intoxicating liquor which he is not authorised to sell, unless he shall account for the possession of the same to the satisfaction of the court by which he is tried, he shall forfeit such liquor and the vessels containing the same, and shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds.

Names of
licensed
persons to
be affixed
to pre-
mises.

11. Every licensed person shall cause to be painted or fixed, and shall keep painted or fixed on the premises in respect of which his license is granted, in a conspicuous place and in such form and manner as the [licensing justices] may from time to time direct, his name, with the addition after the name of the word "licensed," and of words sufficient, in the opinion of the said [justices], to express the business for which his license has been granted, and in particular of words expressing whether the license authorises the sale of intoxicating liquor to be consumed on or off the premises only, as the case may be; and no person shall have any words or letters on his premises importing that he is authorised as a licensed person to sell any intoxicating liquor which he is not in fact duly authorised to sell. Every person who acts in contravention of the provisions of this section shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.¹

Offences against Public Order.

Penalty on
persons
found
drunk.

12. Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding ten shillings, and on a second conviction within a period of twelve months shall be liable to a penalty not exceeding twenty shillings, and on a third or subsequent conviction within such period of twelve months be liable to a penalty not exceeding forty shillings.

¹ Words in brackets substituted for "Commissioners of Inland Revenue" and "Commissioners" by L. A. 1874, § 28.

Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle, or steam engine, or who is drunk when in possession of any loaded fire-arms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings, or in the discretion of the court to imprisonment with or without hard labour for any term not exceeding one month.

Where the court commits any person to prison for non-payment of any penalty under this section, the court may order him to be imprisoned with hard labour.

13. If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds. Penalty for permitting drunkenness.

Any conviction for an offence under this section shall be recorded on the license of the person convicted, unless the convicting magistrate or justices shall otherwise direct.¹

14. If any licensed person knowingly permits his premises to be the habitual resort of or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds. Penalty for keeping disorderly house.

Any conviction for an offence under this section shall, unless the convicting magistrate or justices shall otherwise direct, be recorded on the license of the person convicted.¹

15. If any licensed person is convicted of permitting his premises to be a brothel, he shall be liable to a penalty not exceeding twenty pounds, and shall forfeit his license, and he shall be disqualified for ever from holding any license for the sale of intoxicating liquors. Penalty for permitting premises to be a brothel.

¹ Words in italics repealed, L. A. 1874, see §§ 13, 33.

Penalty for
harbouring
constable.

16. If any licensed person—

- (1) Knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or
- (2) Supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty unless by authority of some superior officer of such constable; or

(3) Bribes or attempts to bribe any constable, he shall be liable to a penalty not exceeding, for the first offence ten pounds, and not exceeding for the second or any subsequent offence twenty pounds. *Any conviction for an offence under this section shall, unless the convicting magistrate or justices shall otherwise direct, be recorded on the license of the person convicted.*¹

Penalty for
permitting
gaming.

17. If any licensed person—

- (1) Suffers any gaming or any unlawful game to be carried on on his premises; or
- (2) Opens, keeps, or uses, or suffers his house to be open, kept, or used in contravention of the Act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and nineteen, intituled “An Act for the suppression of betting houses,”

he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

*Any conviction for an offence under this section shall, unless the convicting magistrates shall otherwise direct, be recorded on the license of the person convicted.*¹

Power to
exclude
drunkards
from
licensed
premises.

18. Any licensed person may refuse to admit to and may turn out of the premises in respect of which his license is granted any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this Act.

Any such person who upon being requested in pursuance

¹ Words in italics repealed, L. A. 1874, see §§ 13, 33.

of this section by such licensed person, or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, shall be liable to a penalty not exceeding five pounds, and all constables are required on the demand of such licensed person, agent, or servant to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

The Court committing any person to prison for non-payment of any penalty under this section may order him to be imprisoned with hard labour.

Adulteration.

19. *Penalty on adulteration of intoxicating liquor. Record of conviction on license and on premises.*¹

20. *Licensed person in possession of adulterated liquor or deleterious ingredients.*¹

21. *Schedule of deleterious ingredients.*¹

22. *Analysis of intoxicating liquor.*¹

Closing Licensed Premises in case of Riot.

23. Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen may order every licensed person in or near the place where such riot or tumult happens or is expected to happen to close his premises during any time which the justices may order; and any person who keeps open his premises for the sale of intoxicating liquors during any time at which the justices have ordered them to be closed shall be liable to a penalty not exceeding fifty pounds; and it shall be lawful for any person acting by order of any justices to use such force as may be necessary for the purpose of closing such premises.

Power of
justices to
close
licensed
premises in
case of riot.

24. *Times of closing.*²

25. If, during any period during which any premises are required under the provisions of this Act to be closed,

Penalty on
person

¹ Repealed L. A. 1874, see §§ 13, 33.

² Repealed L. A. 1874, § 33; see now § 3 of that Act.

found on
premises
during
closing
hours.

any person is found on such premises, he shall, unless he satisfies the court that he was an inmate, servant, or a lodger on such premises, or a bonâ fide traveller, or that otherwise his presence on such premises was not in contravention of the provisions of this Act with respect to the closing of licensed premises, be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of this Act to be closed, and if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or such evidence, apprehend him without warrant, and carry him, as soon as practicable, before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false evidence with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Every person who by falsely representing himself to be a traveller or a lodger buys or obtains or attempts to buy or obtain at any premises any intoxicating liquor during the period during which such premises are closed in pursuance of this Act shall be liable to a penalty not exceeding five pounds.

Exemption
from
closing by
order of
local
authority
in respect
of certain
trades.

26. The local authority of any licensing district, upon the production of such evidence as such authority may deem sufficient to shew that it is necessary or desirable so to do for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, *or attending any theatre*, may grant, if such authority think fit, to any licensed victualler or licensed keeper of a refreshment house [or any person licensed to sell beer or cider by retail to be consumed upon the premises], in respect of premises in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, *or of any such theatre*, an order exempting such person from the provisions of this Act with respect to the closing of his premises on such days and during such time,

except between the hours of one and two of the clock in the morning, as may be specified in such order.

The holder of an order under this section shall not be liable to any penalty for not closing his premises on such days and during such time as may be specified in such order; but he shall not be exempt from any other penalty under this or any other Act, or otherwise.

A notice in such form as may be prescribed by the local authority, stating the days and hours during which the premises are permitted to be open under such order of exemption shall be affixed and kept affixed in a conspicuous position outside the premises; and if the holder of the order of exemption make default in affixing or in keeping affixed such notice in manner aforesaid, during any part of the time for which his exemption is granted, he shall be liable to pay a penalty not exceeding five pounds.

Every person who keeps affixed to his premises any such notice when he does not hold an order under this section, shall be liable to a penalty not exceeding ten pounds.

Any such local authority as aforesaid may at any time, if it seem fit to them, withdraw an order under this section, or alter the same by way of extension or restriction, as such authority may deem necessary or expedient, so however as not to render any person liable to any penalty for anything done under such order before the holder was informed of such withdrawal or alteration.

The following persons and bodies of persons shall be deemed to be local authorities of licensing districts for the purposes of this Act; that is to say,

- (1) In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of her Majesty's Principal Secretaries of State:
- (2) In the city of London and the liberties thereof, so far as they are not included in the metropolitan police district, the commissioner of city police, subject to the approbation of the Lord Mayor of the said city:
- (3) In any other place, two justices of the peace in petty session assembled.¹

¹ The words in brackets are inserted by L. A. 1874, §§ 4, 5. This section is repealed as to persons attending any theatre, L. A. 1874, § 4

Intoxi-
cating
liquors not
to be drunk
at refresh-
ment house
during the
hours when
the house
would be
closed if it
were an
inn.

27. No intoxicating liquor shall be consumed upon premises licensed as a refreshment house but not for the sale of any intoxicating liquor during the hours during which the same premises would, if they were the licensed premises of licensed victuallers, be closed by law for the sale and consumption of intoxicating liquor. If any person licensed to keep such refreshment house allows any intoxicating liquor to be consumed on the premises in contravention of this section, he shall be liable for the first offence to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

Amend-
ment of
law as to
refresh-
ment
houses.

28. Every refreshment house in respect of which a license is granted for the sale therein by retail of foreign wine, upon which license an abatement of duty has been allowed under section nine of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-one, intituled "An Act to amend the laws relating to the Inland Revenue," shall be closed every night at ten of the clock, *and where other licensed premises in the same place are required by or in pursuance of this Act to close at nine o'clock at night, at nine of the clock*; and if any person keeping any such refreshment house as is mentioned in this section sells or exposes for sale in such refreshment house, or opens or keeps open any such refreshment house for the sale of intoxicating liquors during the time that such house is directed to be closed by this section, or during such time as aforesaid allows any intoxicating liquor to be consumed on such premises, he shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

*Any conviction for an offence against this section shall be recorded on the license of the person convicted, unless the convicting magistrate or justices shall otherwise direct.*¹

Local
authority
may grant
occasional
licenses
exempting
from pro-

29. If any licensed victualler or keeper of a refreshment house in which intoxicating liquors are sold [or person licensed to sell beer or cider to be consumed on the premises²] applies to the local authority of a licensing district for a license exempting him from the provisions of this Act relating to

¹ Words in italics repealed, 46 & 47 Vict. c. 39; L. A. 1874, §§ 13, 33.

² The words in brackets were inserted in this section by L. A. 1874, § 5.

closing of premises on any special occasion or occasions, it shall be lawful for such local authority, if in his discretion he thinks fit so to do, to grant to the applicant an occasional license exempting him from the provisions of this Act relating to closing of premises during certain hours, and on the special occasion or occasions to be specified in the license; and no licensed victualler or keeper of a refreshment house [or any person licensed to sell beer or cider by retail to be consumed on the premises¹] to whom an occasional license has been granted under this section shall be subject to any penalty for the contravention of the provisions of this Act relating to the closing of premises during the time to which his occasional license extends, but he shall not be exempted by such occasional license from any penalty to which he may be subject by any other provision of this or any other Act of Parliament.

visions relating to closing during certain hours.

Repeated Convictions.

30. If any licensed person on whose license two convictions for offences committed by him against this Act have been recorded is convicted of any offence which is directed by this Act to be recorded on his license, the following consequences shall ensue; that is to say,

Forfeiture of license on repeated convictions.

- (1) The license of such licensed person shall be forfeited, and he shall be disqualified for a term of five years from the date of such third conviction from holding any license; and
- (2) The premises in respect of which his license was granted shall, unless the Court having cognizance of the case in its discretion thinks fit otherwise to order, be disqualified from receiving any license for a term of two years from the date of such third conviction:

Provided that nothing in this section contained shall prevent the infliction by the Court of any pecuniary penalty or any term of imprisonment to which such licensed person would otherwise be liable, or shall preclude the Court from exercising any power given by any other section of this Act of disqualifying such licensed person or such premises for a longer period than the term mentioned in this section.

¹ The words in brackets were inserted in this section by L. A. 1874, § 5.

Disquali-
fication of
premises.

31. The following additional provisions shall be enacted with respect only to convictions of persons who may hereafter become licensed in respect of premises, and shall not apply to a conviction of any person licensed for any premises at the passing of this Act so long as he is licensed in respect of the same premises; viz.,

1. The second and every subsequent conviction recorded on the license of any one such person shall also be recorded in the register of licenses against the premises :
2. When four convictions (whether of the same or of different licensed persons) have within five years been so recorded against premises, those premises shall during one year be disqualified for the purposes of this Act :
3. If the licenses of two such persons licensed in respect of the same premises are forfeited within any period of two years the premises will be disqualified for one year from the date of the last forfeiture :

Provided that where any premises are disqualified under this section notice of such disqualification shall be served upon the owner of the premises in like manner as an order of disqualification is required to be served under this Act, and the regulations for the protection of the owner of premises in case of an order of disqualification shall, so far as the same are applicable, extend to the case of disqualification under this section.

Conviction
after five
years not
to increase
penalty.

32. A conviction for any offence under this Act shall not after five years from the date of such conviction be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture.

Omission
to record
conviction
on license.

33. Where a conviction for an offence is by this Act directed to be recorded on the license of any person, the fact of no such record having been made shall not, if such conviction be otherwise proved to the satisfaction of the court having cognizance of any case under this Act, exempt such person or the premises occupied by him from any penalty to which such person or premises would have been subject if such record had been duly made. And on such proof being given the omitted conviction may be recorded accordingly,

and shall be deemed to have been duly recorded in accordance with this Act.

34. If any person defaces or obliterates, or attempts to deface or obliterate, any record of a conviction on his license, he shall be liable to a penalty not exceeding five pounds.

Penalty for defacing record of conviction on license.

35. *Entry on premises by constables.*¹

Registers.

36. There shall be kept in every licensing district by the clerk of the licensing justices of that district a register, to be called the register of licenses, in such form as may be prescribed by such justices, containing the particulars of all licenses granted in the district, the premises in respect of which they were granted, the names of the owners of such premises, and the names of the holders for the time being of such licenses. There shall also be entered on the register all forfeitures of licenses, disqualifications of premises, records of convictions, and other matters relating to the licenses on the register.

Register of licenses to be kept in licensing district.

Every person applying for a new license, or the renewal of a license, shall state the name of the owner of the premises in respect of which such license is granted or renewed, and such name shall be endorsed on the license, and the person whose name is so stated shall, subject as hereinafter mentioned, be deemed for the purposes of this Act to be the owner of the premises.

A Court of summary jurisdiction may, on the application of any person who proves to the Court that he is entitled to be entered as owner of any premises in place of the person appearing on the register to be the owner, make an order substituting the name of the applicant, and such order shall be obeyed by the clerk of the licensing justices, and a corresponding correction may be directed to be made on the license granted in respect of the premises of which such applicant claims to be the owner.

Any ratepayer, any owner of premises to which a license is attached, and any holder of a license within a licensing district, shall, upon payment of a fee of one shilling, and

¹ Repealed L. A. 1874, § 33; see now § 16 of that Act.

any officer of police, and any officer of inland revenue in such district, without payment, shall be entitled at any reasonable time to inspect and take copies of or extracts from any register kept in pursuance of this section for such district; and the clerk of the licensing justices and every other person who prevents the inspection or taking copies of or extracts from the same, or demands any unauthorised fee therefor, shall be liable to a penalty not exceeding five pounds for each offence.

The licensing justices may, if they think fit, cause the register kept in pursuance of this section to be divided into parts and assign a part to any portion of the licensing district; and there shall be paid by each licensed person to the clerk in respect of such registration the sum or fee of one shilling for every license granted or renewed.

Amendment of Law as to Grant of Licenses.

Licensing
committee
of justices
in counties.

37. In counties a grant of a new license shall not be valid unless it is confirmed by a standing committee of the county justices, in this Act called the county licensing committee.

The justices in Quarter Sessions assembled for every county shall annually appoint from among themselves for the purposes of this Act a county licensing committee, or they may appoint more than one such committee, and assign to any such committee such area of jurisdiction as they may think expedient.

A county licensing committee shall consist of not less than three nor more than twelve members.

The quorum of a county licensing committee shall be three members.

Any vacancies arising in any such committee from death, resignation, or other causes, may be from time to time filled up by the justices in Quarter Sessions by whom the committee is appointed.

A county licensing committee shall be deemed to be a standing committee of the Quarter Sessions by whom they are appointed for the year succeeding their appointment, and their jurisdiction and proceedings shall not be affected by the termination of the sessions at which they were

appointed. The members of a committee retiring at the end of the year may be re-appointed; and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may continue to act as the committee until their successors are appointed.

The justices in Quarter Sessions shall make such regulations with respect to the meetings of any such committee and the transaction of business thereat as they may think fit.

The clerk of the peace of the county shall by himself or his deputy be the clerk of the county licensing committee or committees, and shall perform all such duties in relation to any such committee or committees as he is required by law to perform in relation to the justices in Quarter Sessions assembled. . . .¹

38. In boroughs in which at the commencement of the time appointed for the annual appointment of a licensing committee in this section mentioned there are ten justices acting in and for such borough or upwards, new licenses shall be granted by a committee, who shall for the purpose of such new licenses perform all the duties and be subject to the obligations of licensing justices.

Licensing
committee
of jus-
tices in
boroughs.

In every such borough as aforesaid the justices acting in and for such borough shall annually in the fortnight preceding the commencement of the period during which the general annual licensing meeting for such borough may be held appoint from among themselves for the purposes of this Act a committee of not less than three nor more than seven in number, but no justice shall be appointed a member of such committee unless he is qualified to act under this Act.

Any vacancies arising in such committee (in this Act referred to as the borough licensing committee) from death, resignation, or other causes, may be from time to time filled up by the justices by whom the committee is appointed.

The quorum of a borough licensing committee shall be three members.

The members of the borough licensing committee retiring at the end of the year may be re-appointed; and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may

¹ The rest of this section was repealed by 46 & 47 Vict. c. 39.

continue to act as the borough licensing committee until their successors are appointed.

The grant of a new license by a borough licensing committee shall not be valid unless it is confirmed by the whole body of borough justices, who would, if this Act had not passed, have been authorised to grant licenses, or by a majority of such body present at any meeting assembled for the purpose of confirming such licenses.

In boroughs in which there are not ten justices acting in and for such borough at such time as aforesaid, new licenses shall be granted by the qualified borough justices, but the grant of a new license by such justices shall not be valid unless it is confirmed by a joint committee appointed in respect of such borough in manner hereinafter mentioned :

A joint committee for any such borough as last aforesaid shall consist of three justices of the county in which such borough is situate and three justices of the borough [But if there are not three such borough justices then the deficiency is to be supplied by county justices to be appointed by the county licensing committee¹], but no justice shall be appointed a member of such committee unless he is qualified to act under this Act. The three county justices on a joint committee shall be appointed by the county licensing committee. The same county justices may be appointed members of more than one joint committee under this section. The borough justices on a joint committee shall be appointed by the justices of the borough for which they act, or by the majority of such justices assembled at any meeting held for that purpose. Any casual vacancy arising in the joint committee from death, resignation, or any other cause, may from time to time be filled up by the justices by whom the person creating such vacancy was appointed. The quorum of the joint committee shall be five members. The senior magistrate on the joint committee present at any meeting shall be its chairman; and in the event of an equal division of the committee the chairman shall have a second vote :

* * * * *

¹ Words in brackets inserted by L. A. 1874, § 21.

No objection shall be made to any licenses granted or confirmed in pursuance of this section on the ground that the justices or committee of justices who granted or confirmed the same were not qualified to make such grant or confirmation.

From and after the passing of this Act, the justices of a county shall not for licensing purposes, save in so far as respects the power of appointing members of a joint committee, have any jurisdiction in a borough in which the borough justices have for such purposes concurrent jurisdiction.¹

39. Beyond the limits of the jurisdiction of the metropolitan police courts, a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licenses so far as regards any licensing district wholly or partly within his jurisdiction.

Stipendiary magistrates may act as licensing justices.

40. Every person intending to apply for a new license, or to apply for the transfer of a license, shall publish notice of such application as follows; that is to say—

Regulations as to new licenses and transfer of licenses.

(1) In the case of a new license, he shall cause notice thereof to be given and to be affixed and maintained in manner directed by § 7 of "The Wine and Beerhouse Act, 1869," and any enactment amending the same, and shall advertise such notice in some paper circulating in the place in which the premises to which the notice relates are situate, on some day not more than four and not less than two weeks before the proposed application, and on such day or days, if any, as may be from time to time fixed by the licensing justices:

(2) In the case of the transfer of a license he shall, fourteen days prior to one of the special sessions appointed by the justices for granting transfers of such licenses, serve a notice of his intention to transfer the same upon one of the overseers of the parish, township, or place in which the premises in respect of which his application is to be made are

¹ Part of this section now spent is repealed, 46 & 47 Vict. c. 39.

situate, and on the superintendent of police of the district. This notice shall be signed by the applicant or by his authorised agent, and shall set forth the name of the person to whom it is intended that such license shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice :

- (3) Any license may be authenticated in manner in which a certificate may be authenticated in pursuance of sub-sect. 2 of § 4 of "The Wine and Beerhouse Act Amendment Act, 1870," and the provisions of the said sub-section shall apply accordingly. . . .

The provisions of this section as to notices shall extend to all cases where, under the Intoxicating Liquors Act, 1828, notices are required to be served in a like form to or in the same manner as notices for new licenses.¹

Amend-
ment of
5 & 6 Vict.
c. 44, with
respect to
licenses
wilfully
withheld

41. Whereas by the second section of the Act of the session of the fifth and sixth years of the reign of her present Majesty, chapter forty-four, the magistrates or justices in petty sessions are empowered, in the event of a license being lost or mislaid, to receive a copy of such license, and to deal therewith in manner in the said section mentioned : And whereas it is expedient to extend the power of such magistrates or justices to the reception of a copy of a license in the event of a license being wilfully withheld by the holder thereof: Be it enacted, that such section be construed as if after the words "lost or mislaid" there were inserted the words "or if the application is for the grant of a license [or the transfer of a license], has been wilfully withheld by the holder thereof." ²

Provisions
as to re-
newal of
licenses.

42. Where a licensed person applies for the renewal of his license the following provisions shall have effect :

- (1) He need not attend in person at the general annual licensing meeting, unless he is required by the

¹ Part of this section now spent is repealed, 46 & 47 Vict. c. 39.

² The words in brackets inserted by 47 & 48 Vict. c. 29.

licensing justices [for some special cause personal to himself] so to attend :

- (2) The justices shall not entertain any objection to the renewal of such license, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal of such license [and stating in general terms the grounds of opposition] has been served on such holder not less than seven days before the commencement of the general annual licensing meeting: Provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day, when the case will be heard and the objection considered, as if the notice herein-before prescribed had been given :
- (3) The justices shall not receive any evidence with respect to the renewal of such license which is not given on oath.

Subject as aforesaid, licenses shall be renewed and the powers and discretion of justices relative to such renewal shall be exercised as heretofore.¹

43. Any person who appears before the licensing justices and opposes the grant of a new license, and no other person, may appear and oppose the confirmation of such grant by the confirming authority in counties or boroughs; and the confirming authority may award such costs as they shall deem just to the party who shall succeed in the proceedings before them. In a county the justices in Quarter Sessions assembled, and in a borough the borough justices [and in cases where a joint committee is appointed then the joint committee] shall make rules as to the proceedings to be adopted for confirmation of new licenses and the costs to be incurred in any such proceedings, and the person by whom such costs are to be paid.¹ Confr-
mation of
licenses.

44. No license shall be granted under the Intoxicating Liquor Licensing Acts to any person or in respect of any Disqualifi-
cations for
licenses.

¹ The words in brackets inserted by L. A. 1874, §§ 25, 26.

premises declared by or in pursuance of any of the Intoxicating Liquor Licensing Acts or this Act to be disqualified persons or disqualified premises during the continuance of such disqualification. Any license held by any person so disqualified, or attached to premises so disqualified, shall be void.

Qualifi-
cation of
premises
for
licenses.

† 45. Premises to which at the time of the passing of this Act no license under the Acts recited in the Wine and Beerhouse Act, 1869, authorising the sale of beer or wine for consumption thereupon is attached, shall not be subject to any of the provisions now in force prescribing a certain rent or value or rating as a qualification for receiving any such license.

Premises not at the time of the passing of this Act licensed for the sale of any intoxicating liquor for consumption thereupon shall not be qualified to receive a license authorising such sale unless the following conditions are satisfied :

- (a) The premises, unless such premises are a railway refreshment room, shall be of not less than the following annual value :

If situated within the city of London or the liberties thereof, or any parish or place subject to the jurisdiction of the Metropolitan Board of Works, or within the four mile radius from Charing Cross, or within the limits of a town containing a population of not less than one hundred thousand inhabitants, fifty pounds per annum ; or if the license do not authorise the sale of spirits, thirty pounds per annum :

If situated elsewhere and within the limits of a town containing a population of not less than ten thousand inhabitants, thirty pounds per annum : or if the license do not authorise the sale of spirits, twenty pounds per annum :

If situated elsewhere and not within any such town as above mentioned, fifteen pounds per annum ; or if the license do not authorise the sale of spirits, twelve pounds per annum :

- (b) The premises shall be, in the opinion of the licensing authority, structurally adapted to the class of license for which a certificate is sought: Provided that no house, not licensed at the time of the passing of this Act for the sale of any intoxicating liquor for consumption on the premises, shall be qualified to have a license attached thereto authorising such sale, unless such house shall contain, exclusive of the rooms occupied by the inmates of such house, if the license authorise the sale of spirits, two rooms, and if the license do not authorise the sale of spirits, one room, for the accommodation of the public.

46. Whereas in certain cases a license under the Wine and Beerhouse Acts, 1869 and 1870, is not to be granted unless the house and premises in respect of which such license is granted are of such rent and value or are rated to the poor rate on a rent or annual value of such amount as is respectively in that behalf stated in the Acts recited in the Wine and Beerhouse Act, 1869; and it is expedient to substitute in such cases "annual value" for the said rent, value, or rating, and to provide for the ascertaining the annual value of such house and premises: Be it therefore enacted that in cases not provided for by the last preceding section—

Annual
value
necessary
for obtain-
ing grant
of license.

A license under the Wine and Beerhouse Acts, 1869 and 1870, shall not be granted in respect of any premises which are not, in the opinion of the licensing justices who grant such license, of such annual value as is mentioned in that behalf in the Acts recited by the Wine and Beerhouse Act, 1869; and those Acts shall be construed as if "annual value" were therein substituted for "rent," "value," "rated on a rent or annual value," and other like expressions.

If at the first general annual licensing meeting after the passing of this Act the licensing justices are of opinion that any premises which are licensed for the sale of intoxicating liquors at the passing of this Act are not of such annual value as authorises the grant of a license for such premises, they may, notwithstanding, renew such license upon the condition, to be expressed in the license, that the holder thereof, before

the next general annual licensing meeting, improves the premises so as to make them of sufficient annual value, and if the holder fail to comply with such condition the license shall not be renewed at such next general annual licensing meeting.

Mode of
ascertain-
ing annual
value.

47. The licensing justices shall take such means as may seem to them best for ascertaining the annual value of any premises for the purposes of this Act, and may, if they think fit, order a valuation to be made of such premises by a competent person appointed by them for the purpose, and may order the costs of such valuation to be paid by the applicant for a license.

The annual value of premises for the purposes of this Act shall be the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all tenant's rates and taxes, and tithe commutation rent-charge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no license were granted in respect thereof; but no land shall be included in such premises other than any pleasure grounds or flower or kitchen garden, yard, or curtilage usually held and occupied and used by the persons residing in and frequenting the house.

Regu-
lations as
to form of
licenses.

48. The following regulations shall be made with respect to licenses:

- (1) Every license granted after the commencement of this Act shall be in such form as may from time to time be prescribed by a Secretary of State: . . .
- (2) A renewal of a license may be made by an endorsement on the license, or by the issue of a copy of the old license, but in the latter case there shall be endorsed on such copy all convictions made within the previous five years which are endorsed on the old license.

The Commissioners of Inland Revenue may alter the form of any license granted by them for the sale of intoxicating liquors, in such manner as they may think expedient, for the

purposes of bringing such form into conformity with the law for the time being in force.¹

49. Where on the occasion of an application for a new license or transfer or renewal of a license which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant, at the time of his application, applies to the licensing justices to insert in his license a condition that he shall keep the premises in respect of which such license is or is to be granted closed during the whole of Sunday, the justices shall insert the said condition in such license.

Provisions as to six-day licenses.

The holder of a license in which such condition is inserted (in this Act referred to as a six-day license) shall keep his premises closed during the whole of Sunday, and the provisions of this Act with respect to the closing of licensed premises during certain hours on Sunday shall apply to the premises in respect of which a six-day license is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only.

The holder of a six-day license may obtain from the Commissioners of Inland Revenue any license granted by such commissioners, which he is entitled to obtain in pursuance of such six-day license, upon payment of six-seventh parts of the duty which would otherwise be payable by him for a similar license not limited to six days; and if he sell any intoxicating liquor on Sunday he shall be deemed to be selling intoxicating liquor without a license.

The notice which a licensed person is required to keep painted or fixed on his premises shall, in the case of a license under this section, contain words indicating that such license is for six days only. In calculating the amount to be paid for a six-day license any fraction of a penny shall be disregarded.

50. Licenses may be removed from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county, in manner following:

Licenses may be removed from one part of a district to another, etc.

The application for an order sanctioning removal shall be made by the person desiring to be the holder of the license when removed, and shall be made at a general

¹ Part of this section now spent is repealed by 56 & 57 Vict. c. 54.

annual licensing meeting, or any adjournment thereof, to the justices authorised to grant new licenses in the licensing district in which the premises are situated to which the license is to be removed.

Notice of the intended application shall be given in the same manner as notice is given of an application for the grant of a new license.

A copy of the notice shall be personally served upon or sent by registered letter to the owner of the premises from which the license is to be removed, and the holder of the license, unless he is also the applicant.

The justices to whom the application is made shall not make an order sanctioning such removal unless they are satisfied that no objection to such removal is made by the owner of the premises to which the license is attached, or by the holder of the license, or by any other person whom such justices shall determine to have a right to object to the removal.

Subject as aforesaid, such justices shall have the same power to make an order sanctioning such removal as they have to grant new licenses; but no such order shall be valid unless confirmed by the confirming authority of the licensing district.

Legal Proceedings.

Summary
proceed-
ings for
offences
under this
Act, etc.

51. Except as in this Act otherwise expressly provided, every offence under this Act may be prosecuted, and every penalty and forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Act, 1848, subject to the following provisions:

- (1) The Court of summary jurisdiction, when hearing and determining an information or complaint, other than in a case where the offence charged is that of being found drunk in any highway or other public place, or any licensed premises, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of a stipendiary magistrate, or some other officer for the time being empowered by law to do alone any act authorised to be done

by more than one justice of the peace, and sitting alone or with others at some Court or other place appointed for the administration of justice :

- (2) *Scale of imprisonment in default of sum ordered to be paid by offender being realised on distress.*
- (3) *What sufficient description of an offence.*
- (4) *Exception, exemption, excuse, etc., to be proved by defendant.* In all cases of summary proceedings under this Act, the defendant and his wife shall be competent to give evidence :
- (5) All forfeitures shall be sold or otherwise disposed of in such manner as the Court may direct, and the proceeds of such sale or disposal (if any) shall be applied in the like manner as penalties, but the Court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture :
- (6) Penalties and forfeitures under this Act shall not, for the purpose of any Act respecting the application of such penalties, or the costs, charges, and expenses attending proceedings for recovery of such penalties or of forfeitures, be deemed to be penalties or forfeitures under any Act relating to the Inland Revenue.

Any officer appointed by the Commissioners of Inland Revenue may sue for any penalties under this Act, and when so sued for any penalties which may be recovered shall be applied in the manner in which excise penalties are for the time being applicable by law.

Where under this Act any sum for costs (other than costs upon a conviction or order of dismissal of an information) or for compensation, or both, is ordered or awarded to be paid by any person, the amount thereof shall be recovered in manner directed by "The Summary Jurisdiction Act, 1848," for the recovery of costs awarded upon the dismissal of an information or complaint.¹

52. If any person feels aggrieved by any order or Appeal to

¹ Sub-sections (2), (3), and the first part of sub-section (4), are repealed by 47 & 48 Vict. c. 43. See now 42 & 43 Vict. c. 49, §§ 4, 5, 39. The Summary Jurisdiction Act, 1848, is 11 & 12 Vict. c. 43.

Quarter Sessions.

conviction made by a Court of summary jurisdiction, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:

- (1) The appeal shall be made to the next Court of Quarter Sessions. . . .¹

Con-
tinuance
of license
during
pendency
of appeal
against
justices'
refusal to
renew.

53. Where the justices refuse to renew a license, and an appeal against such refusal is duly made, and such license expires before the appeal is determined, the Commissioners of Inland Revenue may, by order, permit the person whose license is refused to carry on his business during the pendency of the appeal upon such conditions as they think just; and, subject to such conditions, any person so permitted may, during the continuance of such order, carry on his business in the same manner as if the renewal of the license had not been refused.

Where a license is forfeited on or in pursuance of a conviction for an offence, and an appeal is duly made against such conviction, the Court by whom the conviction was made may, by order, grant a temporary license to be in force during the pendency of the appeal upon such conditions as they think just.

Conviction,
etc., not to
be quashed
for want of
form, or
removed by
certiorari.

54. No conviction or order made in pursuance of this Act, originally or on appeal, relative to any offence, penalty, forfeiture, or summary order, shall be quashed for want of form, or, if made by a Court of summary jurisdiction, be removed by certiorari or otherwise, either at the instance of the Crown or of any private party, into any superior Court. *Moreover, no warrant of commitment in any such matter shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.*²

As to
record of
convictions
of licensed

55. With respect to the record of convictions of licensed persons for offences under this Act committed by them as such, the following provisions shall have effect in cases where

¹ The rest of this section as to notices, etc., of appeal, is repealed by 47 & 48 Vict. c. 43. See now as to these appeals 42 & 43 Vict. c. 49, § 31, *post*.

² Words in italics repealed by 47 & 48 Vict. c. 43.

this Act requires the conviction to be recorded on the license : persons for
that is to say, offences
under Act.

- (1) The Court before whom any licensed person is accused shall require such person to produce and deliver to the clerk of the court the license under which such person carries on business, and the summons shall state that such production will be required :
- (2) If such person is convicted, the Court shall cause the short particulars of such conviction, and the penalty imposed, to be endorsed on his license before it is returned to the offender :
- (3) The clerk to the licensing justices shall enter the particulars respecting such conviction, or such of them as the case may require, in the register of licenses, kept by him under this Act :
- (4) If the clerk to the Court be not the clerk to the licensing justices, he shall send forthwith to the last-mentioned clerk notice of such conviction, and of the particulars thereof :
- (5) Where the conviction of any such person has the effect of forfeiting the license, or of disqualifying any person or premises for the purposes of this Act, the license shall be retained by the clerk of the Court, and notice of such forfeiture and disqualification shall be sent to the licensing officer of the district, and if the clerk to the Court is not the clerk to the licensing justices to such last-mentioned clerk, together with the forfeited license.

56. Where any tenant of any licensed premises is convicted of an offence against this Act, and such offence is one the repetition of which may render the premises liable to be disqualified from receiving a license for any period, it shall be the duty of the clerk of the licensing justices to serve, in manner provided by this Act, notice of every such conviction on the owner of the premises.

For protection of owners of licensed premises in cases of offences committed by tenants.

Where any order of a Court of summary jurisdiction declaring any licensed premises to be disqualified from receiving a license for any period has been made, the Court shall cause such order to be served on the owner of such

premises, where the owner is not the occupier, with the addition of a statement that the Court will hold a petty sessions at a time and place therein specified, at which the owner may appear and appeal against such order on all or any of the following grounds, but on no other grounds :

- (a) That notice, as required by this Act, has not been served on the owner of a prior offence which on repetition renders the premises liable to be disqualified from receiving a license at any period ; or
- (b) That the tenant by whom the offence was committed held under a contract made prior to the commencement of this Act, and that the owner could not legally have evicted the tenant in the interval between the commission of the offence, in respect of which the disqualifying order was made, and the receipt by him of the notice of the immediately preceding offence which on repetition renders the premises liable to be disqualified from receiving a license at any period ; or
- (c) That the offence in respect of which the disqualifying order was made occurred so soon after the receipt of such last-mentioned notice that the owner, notwithstanding he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval which occurred between the said notice and the second offence.

If the owner appear at the time and place specified, and at such sessions, or any adjournment thereof, satisfy the Court that he is entitled to have the order cancelled on any of the grounds aforesaid, the Court shall thereupon direct such order to be cancelled, and the same shall be void.

*In a county the justices in Quarter Sessions assembled, and in a borough the borough justices, shall make rules in pursuance of which any person other than the owner interested in any licensed premises as mortgagee or otherwise shall be entitled on payment of such sum as may be specified in such rules to receive from the clerk to the licensing justices a similar notice to that which an owner of such premises is entitled to receive under this Act.*¹

¹ The latter part of this section is repealed L. A. 1874, § 33.

57. Where a licensed person is convicted of more offences than one committed on the same day, the convictions for which are by this Act directed to be recorded on his license, the Court by whom he is convicted may, in their discretion, order that one or some only of such convictions shall so be recorded.

As to conviction of licensed persons of more than one offence on same day.

58. The registers of licenses kept in pursuance of this Act shall be receivable in evidence of the matters required by this Act to be entered therein. Every endorsement upon a license, and every copy of an entry made in the registers of licenses in pursuance of this Act, purporting to be signed by the clerk to the licensing justices and (in the case of a copy) to be certified to be a true copy, shall be evidence of the matters stated in such endorsement and entry, without proof of the signature or authority of the person signing the same.

Evidence of endorsement and register.

59. Nothing in this Act shall prevent any person from being liable to be indicted or punished under any other Act, or otherwise, so that he be not punished twice for the same offence.

Saving for indictment, etc., under other Acts.

Miscellaneous.

60. No justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Licensing Acts, except in cases where the offence charged is that of being found drunk in any highway or other public place, whether a building or not, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam engine, or of being drunk when in possession of loaded fire-arms, who is or is in partnership with or holds any share in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which such justice usually acts; and no justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Acts, in respect of any premises in the profits to which such justice is interested, or of which

Disqualification of justices to act under this Act.

he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent.

Any justice hereby declared not to be qualified to act under this Act who knowingly acts as a justice for any of the purposes of this Act shall for every such offence be liable to a penalty not exceeding one hundred pounds, to be recovered by action in one of her Majesty's Superior Courts at Westminster :

Provided that—

- (1) No justice shall be disqualified under this section to act in respect of any premises by reason of his having vested in him a legal interest only, and not a beneficial interest, in such premises or the profits thereof :
- (2) No justice shall be liable to a penalty for more than one offence committed by him under this section before the institution of any proceedings for the recovery of such penalty :
- (3) No act done by any justice disqualified by this section shall by reason only of such disqualification be invalid.¹

Extension
of juris-
diction of
justices
over river
or water,
etc.

61. For all the purposes of this Act any pier, quay, jetty, mole, or work extending from any place within the jurisdiction of any licensing justices or Court of summary jurisdiction into or over any part of the sea, or any part of a river within the ebb and flow of the tide, shall be deemed to be within the jurisdiction of such justices and Court.

For the purpose of jurisdiction in any proceeding under this Act, any river or water which runs between or forms the boundary of two or more licensing districts, or of the jurisdiction of two or more Courts of summary jurisdiction, shall be deemed to be wholly within each such licensing district and the jurisdiction of each of such Courts.²

¹ As to the excepted offences, see § 12 of this Act. The Intoxicating Liquor Licensing Acts are the Alehouse Act, 1828, and the Wine and Beerhouse Acts, 1869 and 1870 : see *post*, § 74. For "Superior Courts at Westminster" must now be read "the High Court of Justice : " see 36 & 37 Vict. c. 66, § 16.

² See also 42 & 43 Vict. c. 49, § 46, *post*.

62. In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed or any intoxicating liquor was actually consumed, if the Court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption or intended consumption of intoxicating liquor on premises to which a license under this Act is attached, by some person other than the occupier of or a servant in such premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same, by or on behalf of the holder of such license.

Evidence of sale or consumption of intoxicating liquor.

63. Where a license is forfeited in pursuance of this Act, or becomes void under any of the provisions of this Act, any license for the sale of intoxicating liquors granted by the Commissioners of Inland Revenue to the holder of such license shall be void.

Avoidance of excise license on forfeiture of license.

64. Every holder of a license, or of an order of exemption made by a local authority in pursuance of this Act, shall, by himself, his agent, or servant, produce such license or order within a reasonable time after the production thereof is demanded by a justice of the peace, constable, or officer of inland revenue, and deliver the same to be read and examined by him. Any person who acts in contravention of this section shall be liable to a penalty not exceeding ten pounds.

Production of license by holder, and penalty on non-production.

65. The population of any area for the purposes of this Act shall be ascertained according to the last published census for the time being.

Population to be according to last census.

66. Any part not exceeding a moiety of any penalty recovered under this Act may, if the court shall so direct, be paid to the superannuation fund of the police establishment within whose jurisdiction the offence in respect of which such penalties are imposed shall have occurred.

Moiety of penalties may be awarded to police superannuation fund.

67. *Limit of mitigation of penalties.*¹

¹ This section is now superseded by L. A. 1874, § 12, which see, *post*.

Regu-
lations as
to retail
licenses of
wholesale
dealers.

68. No persons shall sell by retail liqueurs or spirits under the authority of any retail license which such person shall have obtained as a wholesale spirit dealer from the Commissioners of Inland Revenue, except in premises occupied and used exclusively for the sale therein of intoxicating liquor, and which premises have no communication with the premises of nor are in any way occupied by a person who is carrying on any other trade or business, unless such person shall have first obtained from the licensing justices a license authorising such sale in premises not exclusively so occupied and used.

Licenses
for sale of
liqueurs,
etc., by
retail not
to be con-
sumed on
the
premises.

69. A license for the sale of liqueurs or spirits by retail not to be consumed on the premises may, where such license is required by this Act, be granted in the same manner in all respects in which a license for selling wine not to be consumed on the premises may by law be granted, and an application for such a license shall not be refused except upon one or more of the grounds on which a certificate in respect of a license to sell by retail beer, cider, or wine not to be consumed on the premises may be refused. . . .¹

Notices
may be
served by
post.

70. All notices and documents required by this Act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice or document was prepaid, and properly addressed.

Where any officer or other person interested in any licensed premises is entitled to receive notice of a conviction under this Act, he shall supply his address to the clerk or other person required to send such notice, and any notice sent to such address shall be deemed to be duly served; and where no notice is supplied in pursuance of this section, all notices shall be deemed to be duly served if sent to any address which such clerk or other person in the exercise of his discretion believes to be the address of the person to whom the notice was so sent.

¹ The latter part of this section now spent is repealed by 46 & 47 Vict. c. 39.

Provided that any notice of any offence required by this Act to be sent to the owner of licensed premises shall be either served personally or sent by registered letter.

71. The schedules to this Act shall be construed and have effect as part of this Act. Schedules to be part of Act.

Saving Clauses.

72. Nothing in this Act shall affect or apply to— Saving of certain privileges, rights, etc.
1. The privileges at the date of the passing of this Act enjoyed by any university in England, or the respective chancellors or scholars of the same, or their successors :
 2. The privileges at the date of the passing of this Act enjoyed by the mayor or burgesses of the borough of St. Alban's in the county of Hertford, or their successors, or the exemption from the obligation to take out a license as defined by this Act, or a license from the Commissioners of Inland Revenue enjoyed by the company of the master, wardens, and commonalty of vintners of the city of London :
 3. The sale of spruce or black beer :
 4. The sale of intoxicating liquor by proprietors of theatres in pursuance of the Acts in that behalf :
 5. The sale of intoxicating liquor in packet boats, in pursuance of the Acts in that behalf :
 6. The sale of intoxicating liquor on special occasions in pursuance of the provisions in that behalf enacted :
 7. The sale of spirits in canteens, in pursuance of any Act regulating the same :
 8. The sale of medicated or methylated spirits, or spirits made up in medicine and sold by medical practitioners or chemists and druggists :
 9. The sale of intoxicating liquor by wholesale :
 10. Any penalties recoverable by or on behalf of the Commissioners of Inland Revenue, or any laws relating to the Excise.¹

¹ As to the Universities and Vintners' Company, see *ante*, pp. 70-72. As to the borough of St. Albans, see *ante*, p. 71. As to theatres, see *ante*, pp. 73, 199. As to packet boats, see *ante*, pp. 73, 200. As to canteens, p. 74.

License as defined by this Act not required for certain retail sales.

73. A license as defined by this Act shall not be required for—

1. The sale of wine by retail, not to be consumed on the premises, by a wine merchant in pursuance of a wine dealer's license granted by the Commissioners of Inland Revenue; or
2. The sale of liqueurs or spirits by retail, not to be consumed on the premises, by a wholesale spirit dealer whose premises are exclusively used for the sale of intoxicating liquors, in pursuance of a retail license granted by the Commissioners of Inland Revenue, under the provisions of the twenty-fourth and twenty-fifth of her present Majesty, chapter twenty-one, intituled "An Act for granting to her Majesty certain duties of excise and stamps."

Definitions.

Interpretation of terms, etc.

74. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say,

"Intoxicating Liquor Licensing Act, 1828," means the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled "An Act to regulate granting of licenses to keepers of inns, ale-houses, and victualling houses in England," and includes the Acts amending the same:

"Wine and Beerhouse Acts" means the Wine and Beerhouse Act, 1869, and the Wine and Beerhouse Act Amendment Act, 1870:

"Intoxicating Liquors Licensing Acts" means the Intoxicating Liquor Licensing Act, 1828, and the Wine and Beerhouse Acts:

"Intoxicating liquor" means spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a license from the Commissioners of Inland Revenue:

"License" means a license for the sale of intoxicating liquors granted by justices in pursuance of the Intoxi-

cating Liquor Licensing Act, 1828, including a certificate of justices granted under the Wine and Beer-house Acts, and including a license for the sale of sweets which is hereby authorised to be granted in the same manner as if sweets were wine, and including a license for the retail of spirits granted to a wholesale spirit dealer by the justices in pursuance of this Act :

“A new license” means a license granted at a general annual licensing meeting in respect of premises not theretofore licensed for the sale of intoxicating liquors :¹

“The renewal of a license” means a license granted at a general annual licensing meeting by way of renewal :

“The transfer of a license” means a transfer made in special sessions in exercise of the power granted to justices by the fourth section of the said Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled “An Act to regulate granting of licenses to keepers of inns, ale-houses, and victualling houses in England :”

“Licensed person” means a person holding a license as defined by this Act :

“Licensed premises” means premises in respect of which a license as defined by this Act has been granted and is in force :

“Unlicensed premises” means premises in respect of which a license as defined by this Act has not been granted or is not in force :

“Owner of licensed premises” means the person for the time being entitled to receive, either on his own account or as mortgagee or other incumbrancer in possession, the rack-rent of such premises :²

“Licensing district” means the area for which a general annual licensing meeting is held in pursuance of the Intoxicating Liquor Licensing Act, 1828 :

“Licensing justices” means the justices having jurisdiction in respect of the grant of new licenses in a licensing district under the last-mentioned Act as amended by this Act :

¹ Cf. L. A. 1874, § 32.

² Cf. *ibid.*, § 29.

“Licensing officer” means any officer appointed by the Commissioners of Inland Revenue to issue or superintend the issue of licenses under this Act in any place :

“Sale by retail” in respect of any intoxicating liquor means the sale of that liquor in such quantities as is declared to be sale by retail by any Acts relating to the sale of intoxicating liquors :

“County” does not include a county of a city or a county of a town, but means any county, riding, parts, division or liberty of a county having a separate commission of the peace and a separate Court of Quarter Sessions :

“Borough” means a county of a city, county of a town, city, municipal borough, cinque port and its liberties, town corporate or other place in which a general annual licensing meeting is held in pursuance of the Intoxicating Liquors (Licensing) Act, 1828, exclusive of a petty sessional division of a county :

Where a liberty of a county as defined by this Act, is not divided into petty sessional divisions, such liberty shall, so far as respects the provisions of this Act with respect to the grant of new licenses, stand in the same position as if it were a petty sessional division of the county in which it is geographically situate or with which it has the longest common boundary :

“Clerk of the licensing justices” means, where the licensing district is a county or a petty sessional division of a county, the clerk of the petty sessions for such division ; and where the licensing district is a county of a city, county of town, city, municipal borough, town corporate, or other place not a county or a petty sessional division of a county, means the clerk to the justices of such county of a city, county of a town, city, borough, town corporate, or place, or other person performing analogous duties to such clerk ; and where there are more persons than one in any county, petty sessional division, or other place filling the office of clerk of the licensing justices as hereinbefore defined, the licensing justices shall

determine by which of such persons the register of licenses shall be kept:

“*Town*” means any parliamentary or municipal borough Improvement Act district, local government district, or other place having a known legal boundary, and wherever two or more of the above mentioned places occupy portions of the same area, “*town*” shall be taken to mean such one of such places as is the largest in area; and any premises situate in more than one town shall, for the purposes of this Act, be deemed to be in such one of the towns as is the largest in area:

“Local government district” means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Act, 1858:

“Improvement Act district” means any area for the time being subject to the jurisdiction of any commissioners, trustees, or other persons intrusted by any Local Act, not being a Turnpike Act or Highway Act, with powers of improving, cleansing, or paving any part of such district:

* * * * *

“Secretary of State” means one of her Majesty’s Principal Secretaries of State.¹

Repeal.

75. *The several Acts set forth in the second schedule hereto shall be repealed to the extent to which such Acts are therein expressed to be repealed, and in particular there shall be repealed so much of the Wine and Beerhouse Acts as makes such Acts temporary in their duration, and the said Acts shall henceforth be perpetual. . . .*

Repeal of Acts mentioned in second schedule.

Provided also, that in the case of persons intending to apply for billiard licenses under the Act of the eighth and

¹ Parts of this section defining “Court of summary jurisdiction,” “Quarter Sessions,” “Police district,” and “Police authority” are repealed by 56 & 57 Vict. c. 54, and 46 & 47 Vict. c. 39. As to Court of summary jurisdiction, see now 52 & 53 Vict. c. 63, § 13 (11), and *Boulter v. Kent Justices*, [1897] A. C. p. 556; 66 L. J. Q. B. 787; 61 J. P. 532. As to Court of Quarter Sessions, see the same Act, § 13 (4). The definition of “town” in this section is repealed for the purposes of the provisions with respect to closing and a new license; see L. A. 1874, § 33, and definition of “Town” in § 32 of that Act.

ninth years of the reign of her present Majesty, chapter one hundred and nine, intituled "An Act to amend the Law concerning Games and Wagers," or for the transfer of such licenses, the same notices shall be given as are by this Act required in the case of licenses as defined by this Act, or as near thereto as circumstances admit; and any person convicted of an offence against the tenor of a billiard license, or of any offence declared by the last-mentioned Act to be an offence against the tenor of a license as defined by this Act, shall be punished under this Act in the same manner in all respects as a licensed person within the meaning of this Act is punishable under this Act for suffering any gaming or any unlawful game to be carried on on his premises; and in construing the last-mentioned Act any reference to the Intoxicating Liquor Licensing Act, 1828, shall be construed to refer to that Act as amended by this Act.¹

76-90. Application of certain of the preceding Provisions of this Act to Ireland.²

SCHEDULES TO WHICH THIS ACT REFERS.

*First Schedule.—Deleterious Ingredients.*³

Second Schedule.—Acts Repealed.

21 Jac. I. c. 7 (*An Act for the better repressing of Drunkenness, etc.*), so much as is unrepealed.

9 Geo. IV. c. 61 (*The Alehouse Act, 1828*), §§ 6, 10, 11; so much of § 13 as relates to the form of license; §§ 18 and 19; §§ 20, 21, 22, 23, 25, 26; also §§ 27, 28, 29, except in so far as the three last-mentioned sections relate to the renewal of licenses or to the transfer of licenses under §§ 4 and 14 of the same Act; also §§ 31, 32, 33, 34.

11 Geo. IV. & 1 Wm. IV. c. 64 (*The Beerhouse Act, 1830*), §§ 6, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27; so much of § 30 as incorporates or applies any repealed enactment.

4 & 5 Wm. IV. c. 85 (*The Beerhouse Act, 1834*), §§ 4, 7, 10;

¹ The words in italics and other parts of this section now spent and here omitted are repealed by 46 & 47 Vict. c. 39. As to billiard licenses, see the Gaming Act, 1845, *ante*, pp. 318-325.

² §§ 76-90 relate exclusively to Ireland, and are omitted.

³ Repealed L. A. 1874, § 33.

so much of § 11 as incorporates or applies any repealed enactment; §§ 18, 22.

2 & 3 Vict. c. 47 (*The Metropolitan Police Act*, 1839), § 41, from "and in the case of any offence" to end of section; §§ 42, 43.

3 & 4 Vict. c. 61 (*The Beerhouse Act*, 1840), §§ 10, 13, 15, 16, 17, 19; also so much of § 21 as incorporates or applies any repealed enactment.

11 & 12 Vict. c. 49 (*Sale of Beer on the Lord's Day Act*, 1848), the whole Act so far as it relates to England.

18 & 19 Vict. c. 118 (*Sale of Beer on the Lord's Day Act*, 1855), the whole Act.

23 & 24 Vict. c. 27 (*The Refreshment Houses Act*, 1860), §§ 5, 17, 20, 26, 27, 28, 29, 31; also §§ 18, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, and 42, so far as such sections relate to the sale of intoxicating liquors or any offences connected therewith; also §§ 39, 40.

23 & 24 Vict. c. 113 (*The Excise Act*, 1860), § 41.

27 & 28 Vict. c. 64 (*The Public-house Closing Act*, 1864), the whole Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold.

28 & 29 Vict. c. 77 (*The Public-house Closing Act*, 1865); the whole Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold.

32 & 33 Vict. c. 27 (*The Wine and Beerhouse Act*, 1869), so much of § 6 as relates to the form of certificate; §§ 12, 13, 14, 15, 16, 17, 18; so much of § 19 as relates to offences; § 22.

33 & 34 Vict. c. 29 (*The Wine and Beerhouse Act*, 1870), §§ 5, 6; § 7 from "the second and third provisoes" to the end of section; §§ 8, 9, 12, 13, 15, 17.

34 & 35 Vict. c. 88 (*Intoxicating Liquors (Licenses Suspension) Act*, 1871), the whole Act.¹

¹ This schedule is repealed by 46 & 47 Vict. c. 39, § 1 and the schedule thereto—"Provided," however, "that where any enactment not comprised in the schedule has been repealed, confirmed, revived, or perpetuated by any enactment hereby repealed, such repeal, confirmation, revivor, or perpetuation shall not be affected by this Act: and the repeal by this Act of any enactment or schedule shall not affect any enactment in which such enactment or schedule has been applied, incorporated, or referred to."

THE BETTING ACT, 1874.

(37 & 38 VICT. c. 15.)

An Act to amend the Act of the sixteenth and seventeenth Victoria, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses."

[8th June, 1874.]

Whereas it is expedient to amend the Act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses," and to extend the provisions of such Act to Scotland :

Be it enacted—

Act to be
construed
with 16
& 17 Vict.
c. 119.
Short title.

1. This Act shall be construed as one with the Act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses" (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Betting Acts, 1853 and 1874, and each of them may be cited separately as the Betting Act of the year in which it was passed.

2. *Commencement of Act.*¹

Penalty on
persons
advertising
as to
betting.

3. Where any letter, circular, telegram, placard, handbill, card, or advertisement is sent, exhibited, or published—

(1) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act, or will make on behalf of any other person, any such bet or wager as is mentioned in the principal Act; or,

(2) With intent to induce any person to apply to any house, office, room, or place, or to any person with the view of obtaining information or advice for the purpose of any such bet or wager or with respect to any such event or contingency as is mentioned in the principal Act; or,

¹ Preamble and § 2 repealed, 56 & 57 Vict. c. 54.

(3) Inviting any person to make or take any share in or in connection with any such bet or wager ;
Every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal Act with respect to offences under that section.

4. Extension to Scotland.

THE LICENSING ACT, 1874.

(37 & 38 VICT. c. 49.)

An Act to amend the Laws relating to the sale and consumption of Intoxicating Liquors. [30th July, 1874.]

Whereas it is expedient to amend the Licensing Act, 1872, in this Act referred to as the principal Act :
*Be it enacted, etc.*¹

Preliminary.

1. This Act and the principal Act shall, so far as is consistent with the respective tenors of such Acts, be construed as one Act, and may be cited together as "The Licensing Acts, 1872-1874;" but this Act may, if necessary, be cited separately as "The Licensing Act, 1874."

Construction and short title of Act.
35 & 36 Vict. c. 94.

2. *Commencement of Act.*²

Hours of Closing.

3. All premises in which intoxicating liquors are sold by retail shall be closed as follows ; (that is to say,) (1) If situate within the Metropolitan district— (a) On Saturday night from midnight until one o'clock in the afternoon on the following Sunday ; and (b) On Sunday night from eleven o'clock until five o'clock on the following morning ; and

Hours of closing premises licensed for sale of intoxicating liquors.

¹ Preamble repealed 56 & 57 Vict. c. 54.

² Repealed 56 & 57 Vict. c. 54.

(c) On all other days from half an hour after midnight until five o'clock on the same morning; and

(2) If situate beyond the metropolitan district and in the metropolitan police district or in a town or in a populous place as defined by this Act,—

(a) On Saturday night from eleven o'clock until half an hour after noon on the following Sunday; and

(b) On Sunday night from ten o'clock until six o'clock on the following morning; and

(c) On the nights of all other days from eleven o'clock until six o'clock on the following morning; and

(3) If situate elsewhere than in the metropolitan district or the metropolitan police district or such town or populous place as aforesaid,—

(a) On Saturday night from ten o'clock until half an hour after noon on the following Sunday; and

(b) On Sunday night from ten o'clock until six o'clock on the following morning; and

(c) On the nights of all other days from ten o'clock until six o'clock on the following morning.

Such premises wherever situate shall, save as herein-after mentioned, be closed on Sunday afternoon from three or half-past two according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon until six o'clock.

Such premises wherever situate shall be closed on Christmas Day and Good Friday and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday, and the preceding days were respectively Saturday, but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.

Exemptions
as to
theatres
repealed.

4. An exemption from the above-mentioned hours of closing shall not be granted in respect of premises in the neighbourhood of a theatre, for the accommodation of persons attending the same, *and so much of the twenty-sixth section of the principal Act as provides for the granting of an order making such exemption shall be repealed.*¹

¹ Words in italics repealed by 46 & 47 Vict. c. 39.

5. The grant of an order of exemption under the said twenty-sixth section amended as aforesaid may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or licensed keeper of a refreshment house. Exemptions as to beer-houses.

The grant of a license under the twenty-ninth section of the principal Act may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or keeper of a refreshment house in which intoxicating liquors are sold. Further exemptions as to beer-houses.

6. Notwithstanding anything in this or in any Local Act contained, the licensing justices may, if they think fit, as respects premises in which intoxicating liquors are sold, when situate in any place beyond the metropolitan district, for the purpose of accommodating the hours of closing on Sunday, Good Friday, and Christmas Day to the hours of public worship in such place, by order direct that such premises shall remain closed until one o'clock in the afternoon instead of half an hour after noon, and in that case such premises shall be closed in the afternoon from three until six o'clock, instead of from half-past two until six o'clock. Power to vary on Sunday afternoon hours of closing premises for sale of intoxicating liquors.

Any order made by the licensing justices under this section shall not come into operation until the expiration of one month after the date thereof, and shall be advertised in such manner as the licensing justices direct, and shall be in force until the same is revoked; the expense of any such advertisement may be defrayed in like manner as the expenses of advertising the sittings of such justices are defrayed.

7. Where, on the occasion of any application for a new license, or the removal or renewal of a license which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to insert in his license a condition that he shall close the premises in respect of which such license is or is to be granted one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall insert the said condition in such license. Early-closing licenses.

The holder of a license in which such condition is inserted (in this Act referred to as an early-closing license) shall close

his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this Act, and the provisions of this Act and the principal Act shall apply to the premises as if such earlier hour were the hour at which the premises are required to be closed.

The holder of an early-closing license may obtain from the Commissioners of Inland Revenue any license granted by such Commissioners which he is entitled to obtain in pursuance of such early-closing license, upon payment of a sum representing six-sevenths of the duty which would otherwise be payable by him for a similar license not limited to such early closing as aforesaid. In calculating the six-sevenths fractions of a penny shall be disregarded.

The notice which a licensed person is required by section eleven of the principal Act to keep painted or fixed on his premises shall, in the case of an early-closing license, contain such words as the licensing justices may order for giving notice to the public that an early-closing license has been granted in respect of such premises.

Remission
of duty in
case of six-
day and
early-
closing
license.

8. A person who takes out a license containing conditions rendering such license a six-day license, as well as an early-closing license, shall be entitled to a remission of two-sevenths of the duty.

Penalty for
infringing
Act as to
hours of
closing.

9. Any person who—

During the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors although purchased before the hours of closing to be consumed in such premises,—

shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

Saving as
to bonâ fide
travellers
and
lodgers.

10. Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to bonâ fide travellers or to persons

lodging in his house: Provided, that no person holding a six-day license shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

Nothing in this Act contained as to hours of closing shall preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad.

If in the course of any proceedings which may be taken against any licensed person for infringing the provisions of this Act or the principal Act, relating to closing, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a bonâ fide traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a bonâ fide traveller, and further that the defendant took all reasonable precaution to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a bonâ fide traveller, it shall be lawful for the justices to direct proceedings to be instituted against such purchaser under the twenty-fifth section of the principal Act.

A person for the purposes of this Act and the principal Act shall not be deemed to be a bonâ fide traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare.

11. Whereas by the Act of the session of the twenty-seventh and twenty-eighth years of the reign of her present Majesty, chapter sixty-four, it is provided that no persons within the limits of that Act shall open or keep open any refreshment house, to which that Act so far as it is unrepealed applies, or sell or expose for sale or consumption in any such refreshment house any refreshments or any article whatsoever between the hours of one and four o'clock in the morning: And whereas it is expedient to amend the provisions of the said Act: Be it therefore enacted, that the said Act, so far as it is unrepealed, shall be construed as if there were substituted therein for the hour of one o'clock in

Hours of
closing
night
houses.

the morning the hour of the night or morning at which premises licensed for the sale of intoxicating liquors by retail situate in the same place as such refreshment house are required to be closed, and as if the whole of England were within the limits of the Act, *and as if the expression "district" in the Act included any place in which such refreshment house is situate.*¹

Record of Convictions and Penalties.

Mitigation
of penal-
ties.

12. The sixty-seventh section of the principal Act is hereby repealed, and in lieu thereof be it enacted, that where any person holding a license under this or the principal Act is convicted of any offence against this or the principal Act, or against any of the Acts recited or mentioned therein, the Court may not, except in the case of a first offence, reduce the penalty to less than twenty shillings, nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorised by any other Act.

Record of
convictions
on licenses.

13. Where any licensed person is convicted of any offence against the principal Act which by such Act was to have been or might have been endorsed upon the license, or of any offence against this Act, the Court before whom the offender is brought shall cause the register of licenses in which the license of the offender is entered, or a copy of the entries therein relating to the license of the offender, certified in manner prescribed by section fifty-eight of the principal Act, to be produced to the Court before passing sentence, and after inspecting the entries therein in relation to the license of the offender, or such copy thereof as aforesaid, the Court shall declare, as part of its sentence, whether it will or will not cause the conviction for such offence to be recorded on the license of the offender, and if it decide that such record is to be made, the same shall be made accordingly.

A declaration by the Court that a record of an offence is to be made on a license shall be deemed to be part of the conviction or order of the Court in reference to such offence, and shall be subject accordingly to the jurisdiction of the Court of appeal.

A direction by the Court that a conviction for an offence

¹ Words in italics repealed by 56 & 57 Vict. c. 54.

is to be recorded on the license of the offender shall for the purposes of the principal Act, be deemed equivalent to a direction or requirement by the Act that such conviction is to be recorded; and all the provisions of the principal Act importing that convictions are required or directed by the Act to be recorded on the license of an offender shall be construed accordingly.

14. Where a licensed person is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licenses, and may be directed to be recorded on the license of the offender in the same manner as if the conviction were for an offence against this Act, and when so recorded shall have effect as if it had been a conviction for an offence against this Act.¹

Record of conviction for adulteration.

15. Where any licensed person is convicted for the first time of any one of the following offences,—

Temporary continuance of licenses forfeited for single offences.

1. Making an internal communication between his licensed premises and any unlicensed premises;
2. Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;
3. Selling spirits without a spirit license;
4. Any felony;

and in consequence either becomes personally disqualified or has his license forfeited, there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a license in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licenses at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.²

¹ As to adulteration, see Food and Drugs Act, 1875, 38 & 39 Vict. c. 63, and 48 & 49 Vict. c. 51, *post*.

² See *ante*, L. A. 1872, § 9; 32 & 33 Vict. c. 27, § 11; L. A. 1872, § 3; 3 & 4 Vict. c. 61, § 7; 23 Vict. c. 27, § 22; and 33 & 34 Vict. c. 29, § 14; also 9 Geo. IV. c. 61, § 14.

Regulations as to entry on Premises.

Constable
to enter on
premises
for en-
forcement
of Act.

16. Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises, or any premises in respect of which an occasional license is in force.

Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.

Search
warrant for
detection
of liquors
sold or kept
contrary to
law.

17. Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorised to be sold by retail, may in his discretion grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorised to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited.

When a constable has entered any premises in pursuance of any such warrant as is mentioned in this section, and has seized and removed such liquor as aforesaid, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises on which he seizes or from which he removes any such liquor as aforesaid, and if he has reasonable ground to suppose that the name or address given is false may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend him without warrant and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Occasional Licenses.

18. Any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races without an occasional license authorising such sale shall, notwithstanding anything contained in any Act of Parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorised by his license to sell the same, and be punishable accordingly.

Occasional
license re-
quired at
fairs and
races.

Provided that this section shall not apply to any person selling or exposing for sale intoxicating liquors in premises in which he is duly authorised to sell the same throughout the year, although such premises are situate within the limits aforesaid.¹

19. Whereas by 26 & 27 Vict. c. 33, § 20, it is provided that the hours during which an occasional license shall authorise the sale of any beer, spirits, or wine, shall extend from sunrise until one hour after sunset: Be it enacted, that the said section shall be construed as if in place of the words "sunrise until one hour after sunset" there were inserted

Occasional
licenses,—
extension
of time for
closing.

¹ See 25 & 26 Vict. c. 22, § 12; 26 & 27 Vict. c. 33, § 21. As to former sales of beer at fairs, see 6 Geo. IV. c. 81, § 11; 9 Geo. IV. c. 61, § 36; 1 Wm. IV. c. 64, § 29.

the words "such hour not earlier than sunrise until such "hour not later than ten o'clock at night as may be specified "in that behalf in the consent given by the justice for the "granting of such occasional license."

Offences on premises with occasional license.

20. For the purpose of so much of the principal Act as relates to offences against public order, that is to say, sections twelve to eighteen, both inclusive, and the sections for giving effect to the same, a person taking out an occasional license shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional license shall be deemed to be licensed premises, and to be the premises of the person taking out such license.

Miscellaneous.

Supply of deficiency in quota of borough justices on joint committee.

21. Where from any reason there are not for the time being three qualified borough justices to form the quota of a joint committee for such borough, in pursuance of section thirty-eight of the principal Act, the deficiency in number of such borough justices shall be supplied by qualified county justices to be appointed by the county licensing committee.

Provisional grant and confirmation of licenses to new premises.

22. Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a license in respect of such premises; and the justices and confirming authority, if satisfied with the plans submitted to them of such house, and that if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a licence in respect thereof, may make such provisional grant and order of confirmation accordingly.

A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices made after such notice has been given as may be required by the justices at a general annual licensing meeting or a special sessions held for

licensing purposes. Such declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional license.

A provisional grant and confirmation of a license shall be subject to the same conditions as to the giving of notices and generally as to procedure to which such grant and confirmation would be subject if they respectively were not provisional, with this exception, that where a notice is required to be put up on a door of a house such notice may be put up in a conspicuous position on any part of the premises.

This section shall, with the necessary variations, extend to the provisional removal to any premises of an existing license under section fifty of the principal Act.

23. Separate licenses of justices shall not be required in the case of separate excise licenses, and a license of justices shall comprehend a permission to the licensee to take out as many excise licenses as may be specified in such license of the justices.

One license of justices may extend to several excise licenses.

24. A license to sell any intoxicating liquor for consumption only off the premises shall not require confirmation by any authority.

Confirmation of license to sell liquor not to be consumed on the premises not required.

25. Where the confirming authority is a joint committee, that committee shall make rules in pursuance of section forty-three of the principal Act as to the proceedings to be adopted for the confirmation of new licenses, and as to the costs of such proceedings, and the persons by whom such costs are to be paid.

Joint committee to make rules under § 43 of principal Act.

26. Whereas by section forty-two of the principal Act it is enacted that a licensed person applying for the renewal of his license need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend: Be it enacted, that such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent.

Notices of adjourned brewster sessions and of intention to oppose.

It shall not be necessary to serve copies of notices of any adjournment of a general annual licensing meeting on holders of licenses or applicants for licenses who are not required to attend at such adjourned annual general licensing meeting.

A notice of an intention to oppose the renewal of a license served under section forty-two of the principal Act shall not be valid unless it states in general terms the grounds on which the renewal of such license is to be opposed.

No appeal
to Quarter
Sessions in
certain
cases.

27. *There shall be repealed so much of section eight of the Wine and Beerhouse Act, 1869, as incorporates or applies any repealed enactment, and no appeal shall be had to Quarter Sessions from any act of any justice with respect to the grant of new certificates under the Wine and Beerhouse Acts, 1869 and 1870.*¹

Substi-
tution of
licensing
justices for
Commis-
sioners of
Inland
Revenue as
respects
certain
notices.

28. *Whereas by section eleven of the principal Act it is provided that every licensed person shall cause to be painted or fixed, and shall keep painted or fixed, on the premises in respect of which his license is granted, in a conspicuous place and in such form and manner as the Commissioners of Inland Revenue may from time to time direct, his name, with such additions as in the said Act mentioned: And whereas it is expedient to substitute in the said section the licensing justices for the Commissioners of Inland Revenue: Be it therefore enacted—*

*That in the said eleventh section the expression “licensing justices” shall be deemed to be substituted for the expression “Commissioners of Inland Revenue,” and the word “justices” for the word “Commissioners.”*²

Definition
of term
“owner.”

29. Any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: Provided, that when such estate or interest is vested in two

¹ Words in italics repealed by 46 & 47 Vict. c. 39.

² Words in italics repealed by 56 & 57 Vict. c. 54.

or more persons jointly, one only of such persons shall be registered as representing such estate or interest.¹

30. No person keeping a house licensed under this or the principal Act shall be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends bonâ fide entertained by him at his own expense.

Person not to be liable for supplying liquor to private friends without charge.

31. *Additional retail license may be granted at Special Sessions, as at any General Annual Meeting.*²

Definitions and Repeal.

32. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say, Definitions.

“The metropolitan district” means the area in that behalf mentioned in the schedule hereto.

“Town” means an urban sanitary district as described for the purposes of the Public Health Act, 1872; and any collection of houses adjacent to a town as so defined shall, for the purpose of the provisions of this Act with respect to the closing of premises, be deemed to be part of such town after it has been declared so to be by an order of the county licensing committee having jurisdiction in the place where such houses are situated: Provided that no urban sanitary district, whether including such adjacent houses or not, shall be deemed a town, unless it contains one thousand inhabitants.

The metropolitan district.”
“Town.”

“Populous place” means any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place.

“Populous place.”

At a meeting especially convened for that purpose in manner provided by any regulations in that behalf, or in default of such regulations by the clerk of the peace, as soon as may be after the passing of this Act, and not later than the first day of September one thousand eight hundred and seventy-four, the county licensing committee shall consider all the cases within their jurisdiction with respect to which it is incumbent upon them to make orders in pursuance of this section, and they shall make orders accordingly, and

¹ Cf. L. A. 1872, § 74.

² Repealed 43 Vict. c. 6, § 2.

shall specify therein the boundaries of such towns or populous places.

The county licensing committee may adjourn any meeting held in pursuance of this section, and may also at any subsequent meeting especially convened for that purpose make with respect to any town or populous place within their jurisdiction any like order not restrictive of any order previously made.

Provided that as soon as may be after the publication of each census the county licensing committee shall, at a meeting to be specially convened for the purpose, revise the orders then in force within their jurisdiction, constituting areas either parts of towns or populous places, and may alter or cancel any of the said orders or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of this Act.

“Occa-
sional
license.”

“Occasional license” means a license to sell beer, spirits, or wine granted in pursuance of the thirteenth section of the Act passed in the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter twenty-two, and section five of the Act of the twenty-seventh year of the reign of her present Majesty, chapter eighteen, and the Acts amending the same in relation to the licenses therein mentioned, or of any of such Acts.

“A new
license.”

“A new license” means a license for the sale of any intoxicating liquor granted at a general annual licensing meeting in respect of premises in respect of which a similar license has not theretofore been granted.

Repeal.

33. *There are hereby repealed the sections of the principal Act relating to the following matters; that is to say,*

- (1) *Sections 19 to 22, both inclusive, relating to adulteration, and the first schedule to the principal Act;*
- (2) *Section 24, relating to hours of closing; and*
- (3) *Section 35, relating to entry on premises by constables; and*
- (4) *So much of sections 5, 6, 13, 14, 16, 17, and 28 as relates to the records of convictions on licenses, and of section 74 as contains the definition of a town for the purposes of the provisions with respect to closing and of a new license.*

- (5) *The last paragraph of section 56, beginning with the words "In a county the justices" to the end of the section. . . .*¹

SCHEDULE.

Metropolitan District.

The city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the *Metropolitan Board of Works*, or within the area contained within a circle the radius of which is four miles from Charing Cross.²

THE CUSTOMS AND INLAND REVENUE ACT, 1875.

(38 & 39 VICT. c. 23.)

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. [14th June, 1875.]

* * * * *

9. A license to a dealer in foreign wine, or to a retailer thereof, shall be granted so as to extend to the sale of any kind of sweets, or made wines, or mead, or metheglin in any quantity, without the payment of any further duty than such as is chargeable on a license to a dealer in foreign wine, or to a retailer thereof.

Wine
dealer's
license to
include
sweets.

* * * * *

¹ This section was repealed by 46 & 47 Vict. c. 39. The Proviso at the end of this section now unimportant, is omitted. This repeal does not revive the sections of L. A. 1872 repealed by § 33 of L. A. 1874. See *ante*, p. 425, note.

² For the Metropolitan Boards of Works must now be read the London County Council. As to the jurisdiction of the London County Council, see 18 & 19 Vict. c. 120, § 249; 25 & 26 Vict. c. 120, § 42.

SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 VICT. c. 63.)

An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state. [11th August, 1875.]

Whereas it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended :

Be it enacted, etc.

1. Repeal of earlier Acts.

2. The term "food" shall include every article used for food or drink by man, other than drugs or water :

The term "drug" shall include medicine for internal or external use. . . .

Interpre-
tation of
words.

Description of Offences.

Prohibition
of the
mixing of
injurious
ingredi-
ents, and
of selling
the same.

3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence ; every offence, after a conviction for the first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

4. Mixing drugs with injurious ingredients.

Exemption
in case of
proof of
absence of
knowledge.

5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or Court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and

that he could not with reasonable diligence have obtained that knowledge.

6. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say,

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

- (1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof;
- (2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent:
- (3) Where the food or drug is compounded as in this Act mentioned;
- (4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.¹

7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients

¹ The Sale of Food and Drugs Act, 1879 (42 & 43 Vict. c. 30, §§ 2, 6), enacted with reference to this section, the following further provisions: In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects (§ 2).

In determining whether an offence has been committed under § 6 of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin (§ 6).

in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Protection
from
offences by
giving of
label.

8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

9. Prohibition against abstracting any part of an article of food before sale.

10 & 11. Appointment of analysts.

12. Purchaser of food may have it analysed and obtain certificate of result from analyst on payment of a sum not exceeding 10s. 6d.

Officer
named to
obtain a
sample of
food or
drug to
submit to
analyst.

13. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Provision
for dealing
with the
sample
when
purchased.

14. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall offer to divide the

article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

15. Provision for analyst dividing sample if seller refuses offer of purchaser to divide the article.

16. Provision for sending article to analyst through post.

17. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores [or any street or open place of public resort], and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.¹

Person refusing to sell any article to any officer liable to penalty.

18. Form of analyst's certificate.

19. Quarterly report of analyst.

20. When analyst's certificate discloses an offence proceedings against offenders to be taken before a Court of summary jurisdiction.²

¹ The words in brackets were inserted in this section by 42 & 43 Vict. c. 30, § 5.

² In all prosecutions under the principal Act, and notwithstanding the provisions of § 20 of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act, the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned. 42 & 43 Vict. c. 30, § 10.

Certificate of analyst prima facie evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.

21. At the hearing of the information in such proceeding, the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

22. Justices or Quarter Sessions may request analysis by Commissioners of Inland Revenue.

23. Person convicted may appeal to Quarter Sessions, provided that he enters into a recognisance with two sufficient sureties within three days after conviction.

In any prosecution defendant to prove that he is protected by exception or provision.

24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to be discharged if he prove that he bought the article in the same state as sold and with a warranty. No costs except on issues proved against him.

25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or Court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

Application of penalties.

26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agree to the acting of an analyst within their district to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the

case of any other prosecution, the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner. . . .

27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate, or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term not exceeding two years with hard labour ;

Punish-
ment for
forging cer-
tificate or
warranty ;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds ;

for wilful
misappli-
cation of
warranty ;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds ;

for false
warranty ;

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

for false
label.

* * * * *

32. For the purposes of this Act every liberty of a Cinque Port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated and subject to the jurisdiction of the justices of such county.¹

Provision
for the
liberty of
a Cinque
Port.

* * * * *

¹ Every liberty having a separate Court of Quarter Sessions, except a liberty of a Cinque Port, shall be deemed to be a county within the meaning of this Act ; see 42 & 43 Vict. c. 30, § 7.

THE INNKEEPERS' ACT, 1878.

(41 & 42 VICT. C. 38.)

An Act for the further relief of Innkeepers. [8th August, 1878.]

Whereas it is just and expedient to give, in addition to the present right of lien, a power of sale under certain circumstances to keepers of hotels, inns, and licensed public-houses upon and in respect of goods and chattels deposited with them or upon the tenements and premises occupied by them :

Be it enacted, etc.

Landlord,
etc., may
dispose of
goods left
with him,
after six
weeks.]

1. The landlord, proprietor, keeper, or manager of any hotel, inn, or licensed public-house shall, in addition to his ordinary lien, have the right absolutely to sell and dispose by public auction of any goods, chattels, carriages, horses, wares, or merchandise which may have been deposited with him or left in the house he keeps, or in the coach-house, stable, stable-yard, or other premises appurtenant or belonging thereunto, where the person depositing or leaving such goods, chattels, carriages, horses, wares, or merchandise shall be or become indebted to the said innkeeper either for any board or lodging or for the keep and expenses of any horse or other animals left with or standing at livery in the stables or fields occupied by such innkeeper.

Provided that no such sale shall be made until after the said goods, chattels, carriages, horses, wares, or merchandise shall have been for the space of six weeks in such charge or custody or in or upon such premises without such debt having been paid or satisfied, and that such innkeeper, after having, out of the proceeds of such sale, paid himself the amount of any such debt, together with the costs and expenses of such sale, shall on demand pay to the person depositing or leaving any such goods, chattels, carriages, horses, wares, or merchandise the surplus (if any) remaining after such sale : Provided further, that the debt for the payment of which a sale is made shall not be any other or greater debt than the debt for which the goods or other articles could have been retained by the innkeeper under his lien.

Provided also, that at least one month before any such sale the landlord, proprietor, keeper, or manager shall cause

to be inserted in one London newspaper and one country newspaper circulating in the district where such goods, chattels, carriages, horses, wares, or merchandise, or some of them, shall have been deposited or left, an advertisement containing notice of such intended sale, and giving shortly a description of the goods and chattels intended to be sold, together with the name of the owner or person who deposited or left the same where known.

2. This Act may be cited as the Innkeepers Act, 1878. Short title.

SUMMARY JURISDICTION ACT, 1879.¹

(42 & 43 VICT. C. 49.)

An Act to amend the Law relating to the Summary Jurisdiction of Magistrates. [11th August, 1879.]

* * * * *

PART II.—AMENDMENT OF PROCEDURE.

31. Where any person is authorised to appeal from the conviction or order of a Court of summary jurisdiction to a Court of General or Quarter Sessions, he may appeal to such Court, subject to the conditions and regulations following:—

- (1) The appeal shall be made to the prescribed Court of General or Quarter Sessions, or if no Court is prescribed, to the next practicable Court of General or Quarter Sessions having jurisdiction in the county borough or place for which the said Court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and
- (2) The appellant shall, within the prescribed time,² or if no time is prescribed within seven days after the

¹ The provisions of this Act now apply to all appeals against summary convictions; 12 & 13 Vict. c. 45 (Baines' Act), being repealed so far as such appeals are concerned: see *ante*, pp. 177, 328.

² See *Ex parte Hawkins*, 64 L. J. M. C., 192.

day on which the said decision of the Court was given, give notice of appeal by serving on the other party and on the clerk of the said Court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal ; and

- (3) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognisance before a Court of summary jurisdiction, with or without a surety or sureties as that Court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the Court of appeal thereon, and to pay such costs as may be awarded by the Court of appeal, or the appellant may, if the Court of summary jurisdiction before whom the appellant appears to enter into a recognisance think it expedient, instead of entering into a recognisance, give such other security, by deposit of money with the clerk of the Court of summary jurisdiction or otherwise, as that Court deem sufficient ; and
- (4) Where the appellant is in custody, the Court of summary jurisdiction before whom the appellant appears to enter into a recognisance may, if the Court think fit, on the appellant entering into such recognisance or giving such other security as aforesaid, release him from custody ; and
- (5) The Court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the Court of summary jurisdiction, or remit the matter, with the opinion of the Court of appeal thereon, to a Court of summary jurisdiction acting for the same county borough or place as the Court by whom the conviction or order appealed against was made, or may make such other order in the matter as the Court of appeal may think just, and may by such order exercise any power which the Court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be

enforced in the same manner, as if it had been made by the Court of summary jurisdiction. The Court of appeal may also make such order as to costs to be paid by either party as the Court may think just; and

(6) Whenever a decision is not confirmed by the Court of appeal, the clerk of the peace shall send to the clerk of the Court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also endorse on the conviction or order appealed against, a memorandum of the decision of the Court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

32. Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a Court of summary jurisdiction shall be made to the next Court of General or Quarter Sessions, such appeal may be made to the next practicable Court of General or Quarter Sessions having jurisdiction in the county borough or place for which the Court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded.¹

33. (1) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a Court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may

Application of provisions respecting appeals to Quarter Sessions to appeals under prior Acts.

Appeal from Court of summary jurisdiction by

¹ Part of this section here omitted was repealed by 47 & 48 Vict. c. 43.

special
case.

apply to the Court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the Court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

38 & 39
Vict. c. 77.

(2) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by rules of Court made in pursuance of the Supreme Court of Judicature Act, 1875, and the Acts amending the same ; and, subject as aforesaid, the Act of the sessions of the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three, intituled, "An Act to improve the administration of the law so far as respects summary proceedings before justices of the peace," shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that Act :

Provided that nothing in this section shall prejudice the statement of any special case under that Act.

* * * * *

THE BEER DEALERS' RETAIL LICENSES ACT, 1880.

(43 VICT. c. 6.)

An Act for amending the law relating to the grant by Justices of Certificates for Beer Dealers' Retail Licenses.

[19th March, 1880.]

Whereas by the enactments described in the schedule to this Act provision is now made for the holder of a strong beer dealer's wholesale excise license obtaining, on a certificate granted by justices, an additional license for sale of beer by retail for consumption off the premises, and it is expedient that justices should be at liberty to exercise their discretion respecting the grant of such certificates, as they are in respect of their certificates for licenses for sale of beer to be consumed on the premises, and that

such certificates should be granted at the general annual licensing meeting of justices, and not at any other time :

Be it therefore enacted, etc., as follows :

1. Section eight of the Wine and Beerhouse Act, 1869, is hereby repealed, as far as the qualification therein contained relates to grants of certificates for such additional licenses as aforesaid; and the licensing justices shall be at liberty either to refuse such certificates as aforesaid on any grounds appearing to them in the exercise of their discretion sufficient, or to grant the same to such persons as they, in the execution of their statutory powers, and in the exercise of their discretion, deem fit and proper.¹

Justices to have discretion as to licenses for consumption of beer off premises. 32 & 33 Vict. c. 27.

2. Section thirty-one of the Licensing Act, 1874, is hereby repealed, as from and after the general annual licensing meeting held in any licensing district next after the passing of this Act; and thenceforth certificates for such additional licenses as aforesaid shall be granted at general annual licensing meetings, and not at any other time.²

Licenses at annual licensing meetings only. 37 & 38 Vict. c. 49.

3. This Act may be cited as the Beer Dealers' Retail Licenses Act, 1880, and shall not extend to Scotland or Ireland, and words therein have the same meaning as in the Licensing Act, 1872.

Short title; extent; construction. 35 & 36 Vict. c. 94.

SCHEDULE.—ENACTMENTS RELATING TO BEER DEALERS' RETAIL LICENSES.

An Act for granting to her Majesty certain duties of Inland Revenue, and to amend the laws relating to the Inland Revenue.—26 & 27 Vict. c. 33 (section one).

The Wine and Beerhouse Act, 1869.—32 & 33 Vict. c. 27.

The Licensing Act, 1874.—37 & 38 Vict. c. 49.

¹ See *post*, 45 & 46 Vict. c. 34.

² The repealed section authorised the granting of additional retail "off" beer licenses at special sessions, in the same manner in which they might be granted at any General Annual Meeting.

INLAND REVENUE ACT, 1880.

(43 & 44 VICT. c. 20.)

An Act to repeal the duties on Malt, to grant and alter certain duties of Inland Revenue, and to amend the Laws in relation to certain other duties. [12th August, 1880.]

Short title. 1. This Act may be cited as the Inland Revenue Act, 1880.

Interpretation of terms. 2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent therewith:

“Person” includes a body of persons, whether corporate or unincorporate.

* * * * *

“Beer” includes ale, porter, spruce beer, and black beer, and any other description of beer.¹

* * * * *

“Commissioners” means Commissioners of Inland Revenue.

* * * * *

PART III.—LICENSES FOR THE SALE OF LIQUORS BY RETAIL.

Meaning of terms. 40. For the purposes of this part of this Act each of the following terms shall have the meaning assigned to it in this section:

“Cider” includes perry:

“Sweets” includes made wines, mead, and metheglin:

“Beer” includes cider:

“Wine” includes sweets.

Alteration of the duties on certain excise licenses. 41. On and after the first day of July, one thousand eight hundred and eighty, in lieu of the duties of excise now payable on the licenses mentioned in this section (except in the case of a license to sell wine by retail to be taken out by a grocer in Scotland), there shall be charged and paid the duties following; (that is to say,)

¹ The definition of “beer” in this Act was amended by 48 & 49 Vict. c. 51, § 4, which, see *post*.

	Duty.		
	£	s.	d.
On a license to be taken out by a person for the selling of cider by retail in England ..	1	5	0
On a license to be taken out by a retailer of sweets in the United Kingdom	1	5	0
On a license to be taken out by a person for the selling by retail in the United Kingdom of beer to be consumed on the premises ..	3	10	0
On a license to be taken out by a person for the selling by retail in England of beer not to be consumed on the premises	1	5	0
On a license (additional) to be taken out by a licensed dealer in beer in England or Ireland authorising him to sell by retail beer not to be consumed on the premises	1	5	0
On a license to be taken out to sell wine by retail to be consumed on the premises ..	3	10	0
On a license to be taken out by any person in England or Ireland for the sale by retail in any shop of wine not to be consumed on the premises	2	10	0

42. (1) On and after the first day of July, one thousand eight hundred and eighty, there shall be charged and paid upon licenses for the sale by retail of beer and wine to be taken out by any persons in the United Kingdom who may be authorised to obtain the same, the duties of excise following; (that is to say,)

	Duty.		
	£	s.	d.
On a license for the sale by retail of beer and wine to be consumed on the premises ..	4	0	0
On a license for the sale by retail of beer and wine not to be consumed on the premises ..	3	0	0

(2) Every such license shall be in such form as the Commissioners shall direct, and shall expire in England or Ireland on the tenth day of October, and in Scotland on the fifteenth day of May, in each year.

43. (1) On and after the first day of July one thousand eight hundred and eighty, in lieu of the duties of excise now

Duties on licenses for the retailing of beer and wine.

Alteration of duties

on licenses payable on licenses to be taken out by retailers of spirits in the United Kingdom, there shall be charged and paid the duties following; (that is to say,)

					Duty.		
					£	s.	d.
If the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and gardens therewith occupied, is under 10l.					4	10	0
Is 10l. and under 15l.					6	0	0
„ 15l. „ 20l.					8	0	0
„ 20l. „ 25l.					11	0	0
„ 25l. „ 30l.					14	0	0
„ 30l. „ 40l. „					17	0	0
„ 40l. „ 50l.					20	0	0
„ 50l. „ 100l.					25	0	0
„ 100l. „ 200l.					30	0	0
„ 200l. „ 300l.					35	0	0
„ 300l. „ 400l.					40	0	0
„ 400l. „ 500l.					45	0	0
„ 500l. „ 600l.					50	0	0
„ 600l. „ 700l.					55	0	0
„ 700l. or above					60	0	0

(2) The holder of a license to retail spirits chargeable with duty under this Act shall not be required to take out any further or other excise license to enable him to sell beer or wine by retail. The holder of such license shall not be liable for any per-centage, discount, or other charge more than the amount stated in the Act.

(3) Any person applying for a six days' and early closing license for the sale of spirits as an auxiliary only to his business as a restaurateur or eating-house keeper, and not keeping an open drinking bar, shall be entitled to his license at a sum not exceeding thirty pounds, no such reduction to be made unless the licensing justices shall have certified by indorsement on their certificate that the nature of the business carried on by the applicant justifies the reduced scale of charge.

(4) Where in the case of premises of the value of fifty

pounds or upwards it shall be proved to the satisfaction of the Commissioners that the premises are structurally adapted for use as an inn or hotel for the reception of guests and travellers desirous of dwelling therein, and are mainly so used, the amount of duty to be paid on a license to retail spirits shall not exceed twenty pounds. Provided that the relief under this sub-section shall not be given in case any portion of the premises is set apart and used as an ordinary public-house for the sale and consumption therein of liquors, and the annual value of such portion, in the opinion of the Commissioners, exceeds twenty-five pounds.

(5) The amount of duty to be paid for a license to retail spirits in any theatre granted under the provisions contained in the seventh section of the Act of the fifth and sixth years of the reign of King William the Fourth, chapter thirty-nine, shall not exceed twenty pounds.¹

* * * * *

44. The provisions regarding six-day licenses and early closing licenses contained in section forty-nine of the Licensing Act, 1872, and sections seven and eight of the Licensing Act, 1874, shall be deemed to apply throughout the United Kingdom.

Extension of six-day and early closing licenses to the United Kingdom.

45. (1) The duty now charged upon a license to supply, retail, and sell foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco to passengers on board any packet-boat or other vessel employed for the carriage and conveyance of passengers, to be consumed in or on board such boat or vessel, shall cease to be payable, and there shall be granted and paid the following duties of excise; (that is to say,)

Duties on licenses for the sale of liquors and tobacco in boats.

Upon a license to be taken out for the sale of spirits, wine, beer, and tobacco to be consumed on board a boat or vessel of any description employed for the carriage and conveyance of persons going as passengers from any place in the United Kingdom to any other place in the United Kingdom, or going from and returning to the same place on the same day,—

Sub-sections (6) and (7) relating to Scotland and Ireland are omitted.

	Duty.		
	£	s.	d.
If the license is to be in force from the day of the date thereof until the thirty-first day of March next ensuing ..	5	0	0
If the license is to be in force for one day only	1	0	0

(2) Such licenses shall be granted under and be subject to the enactments contained in the Act of the ninth year of the reign of King George the Fourth, chapter forty-seven, as amended by section ten of the Act of the fourth and fifth years of the reign of King William the Fourth, chapter seventy-five, so far as such enactments are consistent with this Act and the terms of the licenses respectively.

SUPPLEMENTARY.

Powers and provisions to be applied to excise duties, drawbacks, and licenses under this Act.

46. The duties and drawbacks of excise, charged and allowed by Parts II. and III. of this Act, and the licenses therein mentioned, shall be under the management of the Commissioners; and all the powers, provisions, regulations, and directions contained in any Act relating to excise duties, drawbacks, or licenses, or to penalties or forfeitures under excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the duties and drawbacks charged and allowed by Parts I. and II. of this Act and the licenses therein mentioned, and the penalties and forfeitures imposed by this Act, so far as the same are applicable and are consistent with the provisions of this Act, as fully and effectually as if the same had been herein specially enacted with reference to the last-mentioned duties, drawbacks, licenses, penalties, and forfeitures respectively.

Construction of term "exciseable liquors" in billiard license.

47. The grant of a duty on beer by this Act shall not be deemed to bring beer within the expression "exciseable liquors" as contained in the Third Schedule to the Act of the eighth and ninth years of her Majesty's reign, chapter one hundred and nine.

Saving rights under

48. Nothing in this Act contained shall in anywise alter or affect the rights and privileges now existing under the charters of—

- (1) Any University in the United Kingdom, or certain
 (2) The master, wardens, freemen, and commonalty of charters.
 the Vintners of the city of London, or
 (3) The mayor or burgesses of the borough of Saint
 Albans in the county of Hertford.¹

SPIRITS ACT, 1880.

(43 & 44 VICT. c. 24.)

*An Act to consolidate and amend the Law relating to the
 Manufacture and Sale of Spirits.* [26th August, 1880.]

PRELIMINARY.

1. This Act may be cited as the Spirits Act, 1880.

Short title.

* * * * *

3. In this Act each of the following terms shall have Definitions.
 the meaning assigned to it by this section, unless it is other-
 wise expressly provided, or there is something in the subject
 or context inconsistent with such meaning,—

“Spirits” mean spirits of any description, and includes
 all liquors mixed with spirits, and all mixtures,
 compounds, or preparations, made with spirits.

* * * * *

“Commissioners” means the Commissioners of Inland
 Revenue :

* * * * *

“Distiller,” “rectifier,” “dealer,” and “retailer,” mean
 respectively a person who distils, rectifies, or com-
 pounds, deals in, or retails spirits :

* * * * *

“License” means a license granted by the Com-
 missioners or by an officer duly authorised by them ;
 and “licensed,” as applied to an Excise trader, means
 a person holding a license so granted for the purpose
 of his business :

¹ See *ante*, p. 419.

“Premises,” when used with reference to an Excise trader, means any building or place used by him in the course of his business, and of which entry is required to be made :

“Prescribed” and “approved” mean respectively prescribed or approved by the Commissioners :

* * * * *

“Officer” means officer of Inland Revenue :

* * * * *

DISTILLERS' PREMISES.

* * * * *

11. Penalty of two hundred pounds upon a distiller carrying on the business of a retailer of wine.

* * * * *

RECTIFIERS.

88. Penalty of two hundred pounds upon a rectifier carrying on the business of a retailer of wine.

* * * * *

DEALERS AND RETAILERS.

96. Retailers not to interfere with or defeat gauging.

97. Every retailer to make entry in writing signed by him of every building, room, place, fixed cask, vessel, and utensil intended to be used by him for keeping spirits, distinguishing each place or thing with a separate letter or number.

98. Casks used by retailers for holding spirits to be marked with their capacity in gallons under pain of forfeiture and a penalty of fifty pounds.

99. Where required by an officer retailer to mark quantity and strength of spirits on the outside of the cask or vessel containing such spirits under pain of forfeiture and a penalty of fifty pounds.

* * * * *

101. (1) A dealer or retailer must not carry on his business upon any premises communicating otherwise than by an open public street or carriage road with any premises entered or used by a distiller, or a rectifier keeping a still. Situation of dealer's and retailer's premises.

(2) A retailer must not be concerned or interested in the business of a distiller, or of a rectifier keeping a still, carried on upon any premises within two miles from the premises on which he is licensed to carry on the business of a retailer.

(3) If a dealer or a retailer contravenes this section he shall for each offence incur a fine of two hundred pounds.

102. (1) A dealer must not, unless he has an additional license authorising him so to do, or is also licensed as a retailer, sell, send out, or deliver spirits in any less quantity than two gallons of the same denomination at a time for the same person. Restrictions on sale by dealers and retailers.

(2) A retailer must not, unless he is also licensed as a dealer, sell, send out, or deliver spirits to a rectifier, dealer, or retailer, or buy or receive spirits from another retailer, not being also licensed as a dealer.

(3) A dealer or retailer must not receive, send out, or have in his possession any British spirits of any strength exceeding that at which a distiller may send out spirits of the like denomination.

(4) If a dealer or retailer contravenes this section he shall for each offence incur a fine of fifty pounds, and in case of the spirits being of unlawful strength they shall be forfeited.

103. (1) An officer may at any time take an account of the quantity of spirits in the stock or possession of a dealer or retailer. Penalty for excess in stock of dealer or retailer.

(2) If the quantity of spirits computed at proof found on taking the account exceeds the quantity which ought according to the stock book of the dealer or retailer to be in his possession, the excess shall be forfeited and the dealer or retailer shall incur a fine of twenty shillings for every gallon of the excess.

104. The sale of spirits in any quantity less than two gallons or less than one dozen reputed quart bottles shall be deemed sale by retail. Meaning of sale by retail.

PERMITS, CERTIFICATES, AND STOCK BOOKS.

105 (6). No spirits exceeding in quantity one gallon of the same denomination at a time for the same person may be sent out or delivered from the stock of a retailer unless accompanied by a certificate.

107. Penalty of five hundred pounds on any person sending out spirits without a permit, which are required to be accompanied by a permit. A retailer offending against this section forfeits his excise license.

Certificate
book.

108. (1) Every rectifier, dealer, and retailer must, by written request, obtain from the proper officer a certificate book containing forms of certificates and counterfoils, for which he must give a receipt.

(2) Before sending out or delivering any spirits required to be accompanied by a certificate, he must enter in one of these certificates, and in its counterfoil, the particulars specified in that behalf in the Fourth Schedule, and must sign the certificate.

(3) He must deliver the certificate with the spirits to the person to whom the spirits are entered in the certificate.

(4) He must use the certificates in the order in which they are numbered in the certificate book.

(5) He must keep the certificate book in his premises, open to inspection by any officer, and must allow any officer to make entry therein, or take any extract therefrom.

(6) He must return the certificate book when it is exhausted, or on request, to the proper officer, who shall give a receipt for it.

Penalties
in case of
removal of
spirits
without
certificate.

109. (1) If a rectifier, dealer, or retailer sends out, delivers, or receives any spirits required to be accompanied by a certificate without a certificate or accompanied by an inaccurate certificate he shall for each offence incur a fine of one hundred pounds, and all spirits sent out, delivered or received in contravention of this section shall be forfeited.

(2) A penalty shall not be incurred under this section by reason only of the spirits being in strength not more than one per centum above or two per centum below the strength expressed in the certificate.

110. (1) If a rectifier, dealer, or retailer uses or suffers to be used any certificate taken from his certificate book, except for the removal of spirits from his own stock, or delivers or parts with any form of certificate without filling it up, as required by this Act, he shall for each offence incur a fine of five hundred pounds.

Fraudulent
use of
certificate.

(2) If any person uses a certificate or form of certificate, whether filled up or not, so that the account of spirits kept or checked by an officer, or any examination of spirits by an officer, is or may be frustrated or evaded, he shall for each offence incur a fine of five hundred pounds.

(3) If a rectifier, dealer, or retailer is convicted of an offence under this section, he shall forfeit his license, and no new license shall be granted to him for the remainder of the year for which such forfeited license would have been in force.

111. (1) Every rectifier, dealer, and retailer must on receiving spirits accompanied by a permit or certificate, immediately cancel the permit or certificate in the prescribed manner, and must deliver the cancelled permit or certificate to the officer who first inspects his premises after the receipt thereof.

Cancelling
and
delivery of
permits
and cer-
tificates.

(2) If any person contravenes this section he shall incur a fine of fifty pounds.

(3) But no penalty shall be incurred for the failure to deliver a permit or certificate if it is proved that the failure is caused by the permit or certificate having been lost or destroyed more than three months after the date thereof.

112. (1) Every rectifier, dealer, and retailer must provide himself with and keep a stock book according to a pattern to be obtained on application to the proper officer, and must, on receiving any spirits, and also on sending out or delivering any spirits required to be accompanied by a certificate, enter in his stock book the particulars specified in that behalf in the Fourth Schedule.

Stock book.

(2) He must make these entries at such times as an officer directs, or in the absence of any such direction before the expiration of the day on which the spirits are received, sent out, or delivered.

(3) He must keep the stock book in his premises, open

to inspection by any officer, and must allow any officer to make any entry therein or take any extract therefrom.

(4) He must keep it open to such inspection for not less than twelve months after it is filled up.

Offences
with re-
spect to
certificate
books and
stock
books.

113. If a rectifier, dealer, or retailer—

- (a) fails to obtain, provide, keep, produce, or return a certificate book or a stock book as by this Act required, or to make therein respectively the entries by this Act required; or
- (b) hinders or obstructs any officer in examining a certificate book or a stock book, or in making any entry therein or extract therefrom; or
- (c) cancels, alters, obliterates, or destroys any part of a certificate book or a stock book or any entry therein; or
- (d) makes a false entry in a certificate book or a stock book; or
- (e) separates any certificate, or form of a certificate, from its counterfoil without properly filling up the certificate and counterfoil, or except on the occasion of sending out or delivering spirits there-with;

he shall for each offence incur a fine of one hundred pounds.

* * * * *

POWERS OF OFFICERS.

* * * * *

Power to
enter pre-
mises of
dealer or
retailer and
examine
and take
samples.
Distillers,
etc., to
assist in
taking
account.

141. An officer may at any time enter the premises of a dealer or retailer and inspect and examine the spirits in his stock or possession, and take samples of any such spirits, paying for any samples so taken the usual price thereof.

142. Every distiller, rectifier, dealer, and retailer must, when required by an officer, assist him by a sufficient number of servants in taking account of his stock, and shall for any neglect or refusal so to assist incur a fine of fifty pounds.

* * * * *

GENERAL OFFENCES.

* * * * *

145. (1) Any officer or any officer of Customs, and any officer of the peace having a commission from the Commissioners, may stop and detain any person found carrying or removing any spirits, and may examine the spirits and require the production of a permit or certificate authorising the removal thereof. Arrest of and penalties on persons unlawfully removing spirits.

(2) If a permit or certificate is produced agreeing with the spirits in all respects the officer may endorse thereon the time and place of his examination thereof.

(3) If any person is found carrying or removing any spirits exceeding the quantity of one gallon of the same denomination for the same person and does not, on request by any such officer, forthwith produce a permit or certificate authorising the removal of the spirits, he shall incur a fine of one hundred pounds, and the spirits shall be forfeited.

(5) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour.

(6) Any officer may arrest any person found committing an offence against this section.¹

146. (1) If any person hawks, sells, or exposes to sale any spirits otherwise than in premises for which he is licensed to sell spirits he shall incur a fine of one hundred pounds, and the spirits shall be forfeited. Unlawful hawking and sale of spirits.

(3) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour.

(4) Any person may arrest a person found committing an offence against this section.¹

147. If any person knowingly sells or delivers, or causes to be sold or delivered, any spirits to the end that they may be unlawfully retailed or consumed or carried into consumption, he shall, in addition to any other penalty, incur a fine of one hundred pounds. Sale of spirits for unlawful purposes.

148. If any person receives, buys, or procures any spirits from a person not having authority to sell or deliver the same, he shall incur a fine of one hundred pounds. Unlawful purchase of spirits.

¹ Parts of this section referring to Ireland are omitted.

Penalty for possession of spirits on which duty has not been paid.

149. If any person knowingly buys, or receives, or has in his possession any spirits after they have been removed from the place where they ought to have been charged with duty and before the duty payable thereon has been charged and paid or secured to be paid or the spirits have been condemned as forfeited, he shall forfeit the spirits and incur a fine equal to treble the value of the spirits.

* * * * *

INFORMERS.

Discharge and reward of informers.

155. (1) On the commission of any offence against this Act, the offender who, before any information is lodged against him in respect of the offence, first discovers and informs against any other offender, shall, on the conviction of the person against whom the information is given, be discharged and acquitted from all penalties or disqualification to which at the time of giving the information he may be liable by reason of the offence committed by him.¹

PROCEDURE.

Recovery of fines.

156. Any fine for any offence against this Act may be sued for and recovered, and any goods, chattels, or commodities forfeited under this Act may be returned for condemnation and condemned in the manner provided by law for the recovery of fines or penalties and for the condemnation of goods forfeited under any Act or Acts for the time being in force relating to the revenue of excise or customs.

* * * * *

FOURTH SCHEDULE.—PARTICULARS TO BE SPECIFIED IN REQUEST NOTE FOR PERMIT.

Quantity and strength of spirits for which the permit is required.

Casks or other vessels in which the spirits are contained.

From whom and whence the spirits are to be sent.

To whom and whither the spirits are to be sent.

Mode of conveyance.

¹ The second paragraph of this section as to rewarding informers is repealed by 53 & 54 Vict. c. 21. Under that Act (§ 32) the Commissioners have a discretion to award a sum not exceeding fifty pounds to an informer; but the consent of the Treasury is required to the payment.

PARTICULARS TO BE SPECIFIED IN CERTIFICATE.

Quantity, denomination, and strength of spirits sent out or delivered.

Number of casks or packages in which the spirits are contained.

Day and hour of sending out or delivery.

From whom and whence sent or delivered.

To whom and whither sent or delivered.

Mode of conveyance.

PARTICULARS TO BE ENTERED IN STOCK BOOK.

On receipt :—

Quantity, denomination, strength and gallons computed at proof of spirits received.

Date of receipt.

From whom and whence received.

On sending out or delivery :—

Quantity, denomination, strength and gallons computed at proof of spirits sent or delivered.

Date of sending out or delivery.

To whom or whither sent or delivered.

THE ARMY ACT, 1881.

(44 & 45 VICT. C. 58.)

An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same.

[27th August, 1881.]

* * * * *

BILLETING AND IMPRESSMENT OF CARRIAGES.

Billeting of Officers and Soldiers.

102. During the continuance in force of this Act,¹ so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers or soldiers on any

Suspension
of 3 Chas
I. c. 1 ;

¹ This Act which expires in the United Kingdom on the 30th of April is renewed annually, see 60 Vict. c. 3.

31 Chas. II. inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.
 c. 1;
 6 Anne (I.),
 c. 14, as to
 billeting.

Obligation
 of constable
 to provide
 billets for
 officers,
 soldiers,
 and horses.

103. (1) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses¹ entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2) A route for the purposes of this part of this Act shall be issued under the authority of her Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the commander-in-chief may from time to time order in that behalf.

(3) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

Liability
 to provide
 billets.

104. (1) The provisions of this part of this Act with respect to victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such

¹ "Horse" includes mule, see § 190 (40). As to liability of victualling house keepers under this section, see *Sharrat v. Scotney*, [1892] 2 Q. B. 479.

house as aforesaid, shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

(2) Provided that an officer or soldier shall not be billeted—

- (a) In any private house; nor
- (b) In any canteen held or occupied under the authority of a Secretary of State; nor
- (c) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licenses for the sale of any intoxicating liquor; nor
- (d) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tippling in such house; nor
- (e) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tippling in such house; nor
- (f) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor
- (g) In the house of residence of any foreign consul duly accredited as such.

105. (1) All officers and soldiers of her Majesty's regular forces; and Officers, soldiers, and horses entitled to be billeted
- (2) All horses belonging to her Majesty's regular forces; and
- (3) All horses belonging to the officers of such forces for which forage is for the time being allowed by her Majesty's regulations,
- shall be entitled to be billeted.

106. (1) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following; that is to say, lodging Accommodation and payment on billet.

and attendance for the officer ; and lodging, attendance, and food for the soldier ; and stable room and forage for the horse, in accordance with the provisions of the second schedule to this Act.

(2) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any) have been billeted.

(5) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

Annual list
of keepers
of victual-
ling houses
liable to
billets.

107. (1) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

(2) The police authority shall cause such list to be kept

at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a Court of summary jurisdiction, and the Court, after such notice as the Court think necessary to persons interested, may order the list to be amended in such manner as the Court may think just.¹

108. The following regulations shall be observed with respect to billeting in pursuance of this Act; that is to say, Regulations as to grant of billets.

- (1) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted :
- (2) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer :
- (3) If a keeper of a victualling house feels agrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a Court of summary jurisdiction, and the justice or Court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just :
- (4) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses :
- (5) The regulations with respect to billets contained in the second schedule to this Act shall be duly observed by the constable :

¹ The list does not limit the number of soldiers a victualling house keeper may be required to billet, but only fixes the proportionate liability respectively of the various houses. *Sharratt v. Scotney*, [1892] 2 Q. B. 479.

- (6) A justice of the peace, on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route :
- (7) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

Offences by
constable.

109. If a constable commits any of the offences following that is to say,

- (1) Billets any officer, soldier, or horse on any person not liable to billets without the consent of such person ; or
- (2) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability ; or
- (3) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted ; or
- (4) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted ;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding ten pounds.

Offences by
keepers of
victualling
houses.

110. If a keeper of a victualling house commits any of the offences following ; that is to say,

- (1) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act ; or
- (2) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being

entered in a list as liable or from his liability to billets, or any part of such liability; or

- (3) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

111. (1) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than is allowed by this Act upon any person he shall be guilty of a misdemeanor. Offences by officers or soldiers.

(2) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under part one of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3) A certificate of a conviction for an offence under this section shall be transmitted by the Court making such conviction to a Secretary of State.

* * * * *

SUPPLEMENTAL PROVISIONS AS TO BILLETING AND IMPRESSMENT OF CARRIAGES.

119. (1) The following persons; that is to say,

- (a) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or Application to Court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, etc.
- (b) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the

place only after first making due complaint, if practicable to such commanding officer, may apply to a Court of summary jurisdiction, and such Court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the Court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid.

(2) Provided that the Secretary of State, if it appear to him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a Court of summary jurisdiction for the county, borough, or place for which the Court giving the certificate acted, and the Court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the Court seems just.

* * * * *

166. Prosecution of offences, and recovery and application of fines.¹

* * * * *

Licenses of
canteens.

174. (1) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any license for the time being required to enable such person to obtain or hold any excise license for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise of any Acts for the time being in force affecting such licenses; and excise licenses may be granted to such persons accordingly.

(2) For the purposes of this section the expression "license" includes any license or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise license for the sale of any intoxicating liquor.

* * * * *

¹ Offences triable before a Civil Court under this Act, to be tried before a Court of summary jurisdiction—unless declared a misdemeanor or punishable on indictment. Court may order half the fine, or a less portion thereof, to be paid to the informer,

SECOND SCHEDULE.

PART I.—BILLETING.

Accommodation to be furnished by Keeper of Victualling House.

A keeper of a victualling house on whom any officer, soldier, or horse is billeted :—

- (1) Shall furnish the officer and soldier with lodging and attendance; and
- (2) Shall if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with one hot meal on each day, the meal to consist of such quantities of diet and small beer as may be from time to time fixed by her Majesty's regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper, [and with a breakfast consisting of half a pound of bread and a cup of tea];¹ and
- (3) When the soldier is not so entitled to be furnished with a hot meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing and eating his meat; and
- (4) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

PART II.—REGULATIONS AS TO BILLETS.

- (1) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route :
- (2) Care shall always be taken that the billets be made out to the less distant victualling houses in which

¹ The words in brackets were added by 55 & 56 Vict. c. 2, § 6.

suitable accommodation can be found before billets are made out for the more distant victualling houses :

- (3) Except in case of necessity, where horses are billeted each man and his horse shall be billeted on the same victualling house :
- (4) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number :
- (5) Except in case of necessity a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards :
- (6) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a Court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved :
- (7) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment :
- (8) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.¹

¹ The scale of maximum prices to be paid to the keeper of a victualling house for the accommodation provided by him is regulated by the Army (Annual) Act, 1897 (60 Vict. c. 3), as follows: Lodging and attendance for soldier where hot meal furnished, 4*d.* per night; hot meal as specified in Part I. of the above schedule, 1*s.* 3½*d.* per meal; breakfast as above specified, 1½*d.*; where no hot meal furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire and the necessary utensils for dressing and eating his meat, 4*d.* per day; ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse, 1*s.* 9*d.* per day; lodging and attendance, 2*s.* per night. Note, an officer shall pay for his food.

THE SUNDAY CLOSING (WALES) ACT, 1881.

(44 & 45 VICT. c. 61.)

An Act to prohibit the Sale of Intoxicating Liquors on Sunday in Wales. [27th August, 1881.]

1. In the principality of Wales all premises in which intoxicating liquors are sold or exposed for sale by retail shall be closed during the whole of Sunday. Premises where intoxicating liquors sold to be closed on Sundays in Wales.
2. The Licensing Acts, 1872–1874, shall apply in the case of any premises closed under this Act as if they had been closed under those Acts. Application of Licensing Acts.
3. Commencement of Act.¹ 35 & 36
4. Nothing in this Act contained shall preclude the sale at any time at a railway station of intoxicating liquors to persons arriving at or departing from such station by railway. Vict. c. 94; 37 & 38 Vict. c. 49. Sale of intoxicating liquors at railway stations.
5. This Act may be cited as the Sunday Closing (Wales) Act, 1881. Short title.

THE BEER DEALERS' RETAIL LICENSES

(AMENDMENT) ACT, 1882.

(45 & 46 VICT. c. 34.)

An Act to amend "The Beer Dealers' Retail Licenses Act, 1880." [10th August, 1882.]

Whereas by the Beer Dealers' Retail Licenses Act, 1880, it is provided that the licensing justices shall be at liberty to exercise their discretion respecting the grant of certificates for such additional licenses for sale of beer by retail off the premises as are therein referred to, and that certificates for such additional licenses shall be granted at general annual licensing meetings, and not at any other time : 43 Vict. c. 6.

¹ Repealed 57 & 58 Vict. c. 56.

And whereas it is expedient to extend the provisions of the said Act to the granting of certificates for all licenses for sale of beer by retail for consumption off the premises :

Be it therefore enacted, etc., as follows :

Extension
of dis-
cretion as
to licenses
for con-
sumption
of beer off
the pre-
mises.
32 & 33
Vict. c. 27.

1. Notwithstanding anything in section eight of the Wine and Beerhouse Act, 1869, or in any other Act now in force, the licensing justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any license for sale of beer by retail to be consumed off the premises on any grounds appearing to them sufficient, or to grant the same to such persons as they in the execution of their statutory powers and in the exercise of their discretion deem fit and proper.

Certificates
at annual
licensing
meetings
only.

2. Certificates for any such licenses as aforesaid shall, notwithstanding anything in any Act now in force, be granted at general annual licensing meetings, and not at any other time.¹

Short title,
etc.

3. This Act may be cited as the Beer Dealers' Retail Licenses (Amendment) Act, 1882; and shall not extend to Scotland; and words therein have the same meaning as in the Licensing Act, 1872.

THE MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 VICT. c. 50.)

An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales.

[18th August, 1882.]

* * * * *

ADMINISTRATION OF JUSTICE.

Borough Justices.

* * * * *

160. (1) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices' room, with offices, for the business of the borough justices.

Justices'
room.

¹ See *ante*, p. 31, note 5; also L. A. 1874, § 31, p. 439.

(2) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

* * * * *

165. (4) The recorder shall not, by virtue of his office, have power . . .

(c) To grant any license or authority to any person to keep an inn, alehouse, or victualling house to sell exciseable liquors by retail.

* * * * *

LEGAL PROCEEDINGS.

221. (1) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate Court of Quarter Sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

Appli-
cation of
penalties
in Quarter
Sessions
boroughs.

(2) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(a) Directs payment thereof to the informer or to any person aggrieved; or

(b) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or

(c) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

* * * * *

LICENSING.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England," the expressions "town

Explan-
ation of
terms in
9 Geo. IV.
c. 61.

corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

THE PAYMENT OF WAGES IN PUBLIC-HOUSES PROHIBITION ACT, 1883.

(46 & 47 VICT. c. 31.)

An Act to prohibit the Payment of Wages to Workmen in Public-houses and certain other places. [20th August, 1883.]

Whereas by the Coal Mines Regulation Act, 1872 (35 & 36 Vict. c. 76), and the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), the payment in public-houses, beershops, or other places in the said Acts mentioned of wages to persons employed in or about any mines, to which the said Acts apply is prohibited, and it is expedient to extend such prohibition to the payment in public-houses, beershops, and other places in England and Scotland of wages to all workmen as defined by this Act :

Be it therefore enacted, etc., as follows :

Short title.

1. This Act may be cited as the Payment of Wages in Public-houses Prohibition Act, 1883.

Definition
of work-
man.

2. In this Act the expression "workman" means any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or is otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, but does not include a domestic or menial servant, nor any person employed in or about any mine to which the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, applies.¹

No wages
to be paid
within
public-
house.

3. From and after the passing of this Act no wages shall be paid to any workman at or within any public-house, beer-shop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except

¹ See *ante*, p. 383, and *post*, p. 488.

such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman bonâ fide employed by him.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this Act shall be guilty of an offence against this Act.

And in the event of any wages being paid by any person in contravention of the provisions of this Act for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act and to prevent such contravention.

4. Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding ten pounds for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England in the manner provided by the Summary Jurisdiction Acts. Penalties.

5. This Act shall not apply to Ireland.

Act not to
apply to
Ireland.

THE CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1883.

(46 & 47 VICT. C. 51.)

*An Act for the better prevention of Corrupt and Illegal Practices
at Parliamentary Elections.* [25th August, 1883.]

* * * * *

ILLEGAL HIRING.

20. (a) Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by a license (whether the license be for consumption on or off the premises), or

(b) Any premises where any intoxicating liquor is sold, or is supplied to members of a club, society, or association other than a permanent political club, or

Use of
committee
room in
house for
sale of
intoxi-
cating
liquor or
refresh.

ment, or in elementary school, to be illegal hiring. (c) Any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises,

* * * * *

shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election, and if any person hires or uses any such premises or any part thereof for a committee room he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring :

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Punish-
ment of
illegal pay-
ment, em-
ployment,
or hiring.

21. (1) A person guilty of an offence of illegal hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2) A candidate or an election agent of a candidate who is personally guilty of an offence of illegal hiring shall be guilty of an illegal practice.

* * * * *

DISQUALIFICATION OF ELECTORS.

38. (8) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect :

(a) If it appears to the Court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the Court shall direct such conviction to be entered in the proper register of licenses.

(b) If it appears to an election Court or election commissioners that a licensed person has knowingly

suffered any bribery or treating in reference to any election to take place upon his licensed premises, such Court or commissioners (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and whether such person obtained a certificate of indemnity or not it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses.

- (c) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

(9) Where the evidence showing any corrupt practice to have been committed by . . . any licensed person, was given before election commissioners, those commissioners shall report the case to the Director of Public Prosecutions, with such information as is necessary or proper for enabling him to act under this section.

(10) This section shall apply to an election Court under this Act, or under Part IV. of the Municipal Corporations Act, 1882,¹ and the expression election shall be construed accordingly.

* * * * *

LEGAL PROCEEDINGS.

54. (1) All offences under this Act punishable on summary conviction may be prosecuted in manner provided by the Summary Jurisdiction Acts. Prose-
cution on
summary

¹ *I.e.* a Court for the trial of an election petition questioning a municipal election; see § 77.

conviction, (2) A person aggrieved by a conviction by a Court of
and appeal summary jurisdiction for an offence under this Act may
to Quarter appeal to General or Quarter Sessions against such conviction.
Sessions.

* * * * *

64. In this Act, unless the context otherwise requires,

* * * * *

the expression "Licensing Acts" means the Licensing Acts,
1872 and 1874.

* * * * *

THE LICENSING (EVIDENCE) ACT, 1884.

(47 & 48 VICT. c. 29.)

An Act to extend Section forty-one of the Licensing Act, 1872.

[28th July, 1884.]

Whereas by the forty-first section of the Licensing Act, 1872, it is provided that magistrates or justices in petty session may, if the application is for the grant of a license, receive a copy of the license if the same has been wilfully withheld by the holder thereof, and it is expedient to extend the said section :

Be it enacted, etc., as follows :—

Extension
of 35 & 36
Vict. c. 94,
§ 41.

1. Section forty-one of the Licensing Act, 1872, shall be construed as if after the words "application is for the grant of a license" there were inserted the words "or for the transfer of a license."

Provided that the magistrates or justices shall be satisfied by evidence submitted to them that the license is withheld without any legal right to withhold the same.

Short title.

2. This Act may be cited as the Licensing (Evidence) Act, 1884.

THE MUNICIPAL ELECTIONS (CORRUPT AND
ILLEGAL PRACTICES) ACT, 1884.

(47 & 48 VICT. C. 70.)

*An Act for the better Prevention of Corrupt and Illegal Practices
at Municipal and other Elections.* [14th August, 1884.]

* * * * *

16. (1) (a) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

Use of
certain
premises
for com-
mittee
rooms or
meetings
to be
illegal
hiring.

(b) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

17. (1) A person guilty of an offence of illegal hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

Punish-
ment of
illegal pay-
ment, em-
ployment,
or hiring.

(2) Where an offence of illegal hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

Applic-
ation of
§§ 37 & 38
of 46 & 47
Vict. c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part Two of the Third Schedule to this Act, shall apply as part of this Act.¹

THE CUSTOMS AND INLAND REVENUE ACT, 1885
(48 & 49 VICT. c. 51.)

*An Act to grant certain Duties of Customs and Inland Revenue,
and to amend the Laws relating to Customs and Inland
Revenue.* [6th August, 1885.]

CUSTOMS AND EXCISE.

As to Excise.

* * * * *

Extension
of term
"beer" in
43 & 44
Vict. c. 20,
and in
Excise
License
Acts.

4. (1) The term "beer" in the Inland Revenue Act, 1880, shall be construed to extend to any liquor which is made or sold as a description of beer or as a substitute for beer, and which on analysis of a sample thereof at any time shall be found to contain more than two per centum of proof spirit.

(2) In the construction of any Act relating to excise licenses for the sale of beer unless there is something in the subject or context inconsistent therewith, the term "beer" wherever used in such Act shall have the meaning assigned to it by section two of the Inland Revenue Act, 1880, as extended by this section.

* * * * *

Prohibition
against
adulter-
ation of
beer by
dealers and
retailers of
beer.

8. (2) A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification), and any beer found to be adulterated or diluted or mixed with any other matter or thing (except finings) in the possession of a dealer in or

¹ The portions of § 38 set out in the third schedule are (a), (b), and (c) of sub-sect. 8. See *ante*, p. 482.

retailer of beer shall be forfeited, and he shall incur a fine of fifty pounds.

9. The powers and provisions contained in any Act relating to excise allowances, or to penalties or forfeitures under Excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the allowances mentioned in this part of this Act, and the penalties and forfeitures thereby imposed, so far as the same are applicable and are consistent with the provisions of this Act, as fully and effectually as if the same had been herein specially enacted with reference to the last-mentioned allowances, penalties, and forfeitures respectively.

* * * * *

INTOXICATING LIQUORS (SALE TO CHILDREN) ACT, 1886.

(49 & 50 VICT. c. 56.)

An Act for the Protection of Children against the Sale to them of Intoxicating Liquors. [25th June, 1886.]

Whereas it is expedient to protect young children against the immoral consequences resulting from their being permitted to purchase intoxicating liquors for their own consumption :

Be it therefore enacted, etc. :

1. Every holder of a license who knowingly sells, or allows any person to sell, any description of intoxicating liquors to any person under the age of thirteen years for consumption on the premises by any person under such age as aforesaid, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.

Sale of
liquors to
children to
be illegal.

2. For the purpose of all legal proceedings required to be taken under the foregoing section, this Act shall be construed as one Act with the Licensing Acts, 1872-1874.

Legal pro-
ceedings to
follow the
Licensing
Acts, 1872-
1874.

3. This Act shall not extend to Scotland.

Extent of
Act.

Short title. 4. This Act may be cited for all purposes as the Intoxicating Liquors (Sale to Children) Act, 1886.

5. Commencement of Act.

COAL MINES REGULATION ACT, 1887.

(50 & 51 VICT. C. 58.)

An Act to consolidate with Amendments the Coal Mines Acts, 1872 and 1886, and the Stratified Ironstone Mines (Gunpowder) Act, 1881. [16th September, 1887.]

PRELIMINARY.

* * * * *

3. This Act shall apply to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act, unless the context otherwise requires, the word mine means a mine to which this Act applies.

* * * * *

WAGES.

11. (1) No wages shall be paid to any person employed in or about any mine at or within any public-house, beer-shop, or place for sale of any spirits, beer, wine, cider, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto or occupied therewith.

(2) Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent the contravention or non-compliance.

LEGAL PROCEEDINGS.

59. (1) Every person employed in or about a mine, other than an owner, agent, or manager, who is guilty of any act or omission which in the case of an owner, agent, or manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act. Penalty for offences against Act.

(2) Every person who is guilty of an offence against this Act for which a penalty is not expressly prescribed, shall be liable to a fine not exceeding, if he is an owner, agent, or manager, or under-manager, twenty pounds, and if he is any other person, two pounds, for each offence; and if an inspector has given written notice of any such offence, to a further fine not exceeding one pound for every day after such notice that such offence continues to be committed.

61. (1) All offences under this Act not declared to be misdemeanours, and all fines under this Act, and all money and costs by this Act directed to be recovered as fines, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a Court of summary jurisdiction. Summary proceedings for offences, fines, etc.

* * * * *

62. In every part of the United Kingdom the following provisions shall have effect: General provisions as to summary proceedings.

- (i.) Any complaint or information made or laid in pursuance of this Act shall (save as otherwise expressly provided by this Act) be made or laid within three months from the time when the matter of the complaint or information arose:
- (ii.) Any person charged with any offence under this Act, may, if he thinks fit, be sworn and examined as an ordinary witness in the case:
- (iii.) The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

63. If any person feels aggrieved by any conviction made by a Court of summary jurisdiction on determining any information under this Act, by which conviction, imprisonment, or a fine amounting to or exceeding one half the maximum fine, is adjudged, he may appeal therefrom to a Appeal to Quarter Sessions.

Court of Quarter Sessions in manner provided by the Summary Jurisdiction Acts.

* * * * *

Prose-
cution of
owners,
agents,
managers,
etc.

65. No prosecution shall be instituted against the owner, agent, manager, or under-manager of a mine for any offence under this Act, not committed personally by such owner, agent, manager, or under-manager, which can be prosecuted before a Court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State; and in the case of any offence of which the owner, agent, manager, or under-manager of a mine is not guilty if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner, agent, manager, or under-manager, if satisfied that he had taken such reasonable means as aforesaid. No prosecution shall be instituted against a coroner for any offence under this Act, except with the consent in writing of a Secretary of State.

* * * * *

THE REVENUE ACT, 1889

(52 & 53 VICT. c. 42.)

An Act to amend the Law relating to the Customs and Inland Revenue, and for other purposes connected with the Public Revenue and Expenditure. [26th August, 1889.]

EXCISE.

* * * * *

Expiration
of tobacco
licenses
taken out
by retailers
of intoxi-
cating
liquors.

23. (1) Where any person carries on the trade of a dealer in or seller of tobacco in the same house or premises in which he also carries on the trade of a retailer of spirits, wine, beer, or sweets, the license granted to him for the sale of tobacco shall expire on the day on which the license granted to him for the sale of spirits, wine, beer, or sweets by law expires.

(2) Where by reason of this section a license for the sale of tobacco expires before the date at which it would otherwise have expired, a proportionate part of the duty shall be allowed.

24. If any person holding an excise license for the sale of any article contravenes the terms of his license, or sells otherwise than as he is authorised by the license, he shall for such offence, if the same is not an offence for which any specific penalty is imposed by any excise Act, forfeit the penalty imposed by law upon a person dealing in or retailing or selling such article without having an excise license in force authorising him to do so.

Penalty for
contra-
vention of
terms of
excise
license.

* * * * *

26. The sale of methylated spirits between the hours of ten of the clock in the evening of Saturday and eight of the clock on the following Monday morning is hereby prohibited, and any person selling methylated spirits in contravention of this section shall for each offence, in addition to any other fine or penalty to which he may be liable, incur a fine of one hundred pounds.

Prohibition
of the sale
of methy-
lated
spirits on
Sunday.

27. (1) There shall continue to be paid for the use of her Majesty, her heirs and successors, upon the licenses hereinafter mentioned to be taken out annually in the United Kingdom the following duties of excise:

Consoli-
dation of
law re-
lating to
licenses for
the sale of
methylated
spirits.

£ s. d.

* * * * *

Upon a license to be taken out by a retailer of

methylated spirits 0 10 0

(2) Every such license shall be in such form as the Commissioners of Inland Revenue may direct, and shall expire on the thirteenth day of September in each year.

(3) Every person who makes or sells methylated spirits without being duly licensed or authorised in that behalf shall, in addition to any other penalty or forfeiture incur a fine of fifty pounds.

(4) A license to retail methylated spirits shall not be granted to a distiller or rectifier, or to a person licensed to retail beer, spirits, wine, or sweets for consumption on his premises.

Meaning of
"sweets or
made
wines."

28. In the construction of any enactment relating to the revenue of excise, the expression "sweets or made wines" shall mean any liquor which is made from fruit and sugar or from fruit or sugar mixed with any other material, and which has undergone a process of fermentation in the manufacture thereof.

* * * * *

THE NORTH SEA FISHERIES ACT, 1893.

(56 & 57 VICT. c. 17.)

An Act to carry into effect an International Convention respecting the Liquor Traffic in the North Sea. [29th June, 1893.]

Be it enacted, etc., as follows :

Confirma-
tion of
conven-
tion.

1. The convention set out in the schedule to this Act (hereinafter referred to as the scheduled convention) is, with the protocol thereto annexed, hereby confirmed, and the articles thereof shall be of the same force as if they were enacted in the body of this Act.

Penalty for
supplying,
exchang-
ing, or
otherwise
selling
spirits.

2. If within the North Sea limits but outside territorial waters any person on board or belonging to a British vessel supplies spirituous liquors to any person on board or belonging to a sea fishing boat, he shall be liable—

(a) if the liquors are supplied in exchange for any article not belonging to the person supplied, to a fine not exceeding fifty pounds, or, in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour ; and

(b) if the liquors are sold otherwise than by way of exchange for any such article, to a fine not exceeding thirty pounds, or in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour.

Penalty
for pur-
chasing
spirits by

3. If within the North Sea limits but outside territorial waters any person on board or belonging to a British sea fishing boat purchases spirituous liquors, he shall be liable—

- (a) if he gives any article not belonging to him in exchange for the liquors, to a fine not exceeding fifty pounds, or, in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour; and
- (b) if he purchases the liquors otherwise than by way of exchange for any such article, to a fine not exceeding ten pounds.

4. If within the North Sea limits but outside territorial waters any person on board or belonging to a British vessel deals with any person on board or belonging to a sea fishing boat in any provisions or other articles for his use, except spirituous liquors, without a license granted in pursuance of article three of the scheduled convention, or without carrying on his vessel the mark agreed upon in pursuance of that article, or in contravention of any conditions of a license so granted, he shall be liable to a fine not exceeding twenty pounds, and his license may be revoked.

exchange
or other-
wise.

Penalty for
breach of
license.

5. Her Majesty the Queen may from time to time by order in council make regulations for any of the following purposes:

Power to
make regu-
lations as
to licenses
and other
matters.

- (a) for prescribing the mode in which licenses under article three of the scheduled convention are to be granted, renewed, and revoked; and
- (b) for prescribing the mode of application for such licenses, and the conditions under which, and the time for which, the licenses are to be granted; and
- (c) generally for giving effect to any of the provisions of this Act or any of the articles of the scheduled convention.¹

¹ The regulations made by order in council, 30th April, 1894, are set out in the *London Gazette* for 4th May, 1894. They provide (*i.a.*) (1) The Board of Trade shall be the licensing authority and (3) have full discretion to grant or refuse licenses; (2) licenses only to be granted on the application of the owner of the vessel to be licensed; (5) licenses to be in force during the time named therein, but every license to expire on the ensuing 31st of December. No license to be granted except on (*i.a.*) the following conditions: (a) the vessel shall not have on board a quantity of spirits or spirituous liquors greater than that which the Board of Trade shall in each case deem requisite for the consumption of her crew, and such quantity shall be stated in the license; (c) the license

Enforce-
ment of
Act.

46 & 47
Vict. c. 22.

6. For the purpose of enforcing the provisions of this Act in the case of British and foreign vessels, whether within or beyond the North Sea limits, all British and foreign sea fishery officers respectively within the meaning of the Sea Fisheries Act, 1883, shall have the same powers, and be entitled to the same protection, as they have and are entitled to for the purpose of enforcing the provisions of that Act in the case of British and foreign sea fishing boats respectively.

Provided that in the case of a vessel not being either a sea fishing boat or a vessel habitually employed in dealing with fishermen the power of a sea fishery officer to take the vessel to any port shall not be exercised, unless the sea fishery officer is satisfied that its exercise is necessary for the suppression of grave disorder.

Legal pro-
ceedings.

7. Sections sixteen, eighteen, nineteen, twenty, twenty-one, and twenty-two of the Sea Fisheries Act, 1883, shall apply in the case of offences, fines, and legal proceedings under this Act in the same manner as they apply in the case of offences, fines, and legal proceedings under that Act, and in those sections as so applied the expression "sea fishing boat" shall include any vessel.¹

Evidence.

8. Section seventeen of the Sea Fisheries Act, 1883, shall apply in the case of any formal statement drawn up in pursuance of article seven of the scheduled convention in the same manner as it applies in the case of any document drawn up in pursuance of the convention set out in the first schedule to that Act.²

shall not supply spirituous liquors to any person on board or belonging to a sea fishing boat.

¹ The sections of this Act (46 & 47 Vict. c. 22) here mentioned provide as follows: Offences shall be prosecuted before a Court of summary jurisdiction. If the sum adjudged to be paid exceeds £5, or if imprisonment without the option of a fine is imposed, an appeal lies to Quarter Sessions by a person convicted (§ 16). A sea fishing boat so far as concerns offences committed upon it is deemed to be a "ship;" and a foreign fishing boat within the exclusive fishery limits of the British Islands is subject to British jurisdiction as if a British boat (§ 18). A summons may be served (1) personally; or (2) left at the last place of abode of the defendant; or (3) left with the person (for the time) in command of the sea fishing boat to which the defendant belongs (§ 19).

² Such documents are by that section made evidence (in any civil or criminal proceeding) of the facts stated therein. Any such document purporting to be signed by a sea fishery officer is admissible in evidence

9. In this Act—

The expression “North Sea limits” shall mean the limits of the North Sea as fixed by article four of the convention set out in the first schedule to the Sea Fisheries Act, 1883. Definitions.

The expression “territorial waters” shall mean the territorial waters of her Majesty’s dominions as defined by the Territorial Waters Jurisdiction Act, 1878.¹ 41 & 42

The expression “sea fishing boat” shall have the same meaning as in the Sea Fisheries Act, 1883.² Vict. c. 73.

The expression “vessel” shall include ship, boat, lighter, and craft of every kind, whether navigated by steam or otherwise.

The expression “spirituous liquors” shall include every liquid obtained by distillation and containing more than five per centum of alcohol.

10. (1) This Act shall come into force on such day as may be fixed by a notice in that behalf published in the *London Gazette*.³ Commence-
ment and
continu-
ance of Act.

(2) The provisions of this Act relating to the sea fishery officers of any foreign state bound by the convention set out in the first schedule to the Sea Fisheries Act, 1883, shall continue in operation notwithstanding the termination of the operation of that convention as respects that foreign State.

(3) So much of this Act as has effect outside territorial waters shall, if the scheduled convention ceases to be binding on her Majesty, cease to apply to the vessels and officers of any foreign state bound by the scheduled convention, but, subject as aforesaid, this Act shall continue

without proof of such signature. Imprisonment with hard labour may be imposed on any one convicted of forging such signature.

¹ “The territorial waters of Her Majesty’s dominions,” as defined by 41 & 42 Vict. c. 73, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty’s dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; see § 7.

² The expression “sea fishing boat” includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea fishing or in carrying on the business of a sea fisherman; see § 28.

³ The Act came into force on the 23rd of May, pursuant to notice in the *London Gazette* of April 13, 1894.

in force notwithstanding the determination of the scheduled convention.

(4) A notification in the *London Gazette* shall be sufficient evidence of the adhesion of any foreign state to the scheduled convention, and of the application of this Act to the vessels and officers of any foreign states.

Repeal of
51 & 52
Vict. c. 18.
Short title.

11. The North Sea Fisheries Act, 1888, is hereby repealed.

12. This Act may be cited as the North Sea Fisheries Act, 1893.

SCHEDULE.—CONVENTION RESPECTING THE LIQUOR TRAFFIC IN
THE NORTH SEA.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the German Emperor, King of Prussia, in the name of the German Empire, His Majesty the King of the Belgians, His Majesty the King of Denmark, the President of the French Republic, and His Majesty the King of the Netherlands, having recognised the necessity of remedying the abuses arising from the traffic in spirituous liquors amongst the fishermen in the North Sea outside territorial waters, have resolved to conclude a convention for this purpose, and have named as their Plenipotentiaries, that is to say :

* * * * *

Who, after having communicated their full powers, found in good and due form, have agreed upon the following articles :—

Article I.

The provisions of the present convention shall apply to the North Sea, outside territorial waters, and within the limits fixed by Article IV. of the Convention of the Hague of the 6th May, 1882, respecting the police of the fisheries to every person on board a ship or boat of any one of the high contracting parties.

Article II.

The sale of spirituous liquors to persons on board or belonging to fishing boats is forbidden.

The purchase of those liquors by such persons is forbidden.

The exchange of spirituous liquors for any article, and especially for products of the fisheries, gear, or equipments of fishing boats, or fishing implements, is forbidden.

Every liquid obtained by distillation, and containing more than five litres of alcohol per hectolitre, shall be considered a spirituous liquor.

Article III.

The liberty to deal with fishermen in provisions and other articles for their use (spirituous liquors excepted) shall be subject to a license to be granted by the Government of the country to which the vessel belongs. This license must specify the following amongst other conditions :—

1. The vessel may not have on board a quantity of spirits greater than what is deemed requisite for the consumption of her crew.

2. All exchange of the articles above indicated for products of the fisheries, gear, or equipments of fishing boats, or fishing implements, is forbidden.

Vessels provided with this license must carry a special and uniform mark, to be agreed upon by the high contracting powers.

Article IV.

The high contracting parties engage to take, or to propose to their respective legislatures, the necessary measures for insuring the execution of the present convention, and especially for punishing, by either fine or imprisonment, or by both, those who may contravene Articles II. and III.

Article V.

The tribunals competent to take cognisance of infractions of Articles II. and III. are those of the country to which the accused vessel belongs. If vessels of different nationalities should be implicated in the same infraction, the powers to which such vessels belong will mutually communicate to each other the judgments given by the tribunals.

Article VI.

Prosecutions for infractions shall be instituted by the state, or in its name.

Infractions may be verified by all means of proof allowed by the legislation of the country of the Court concerned.

Article VII.

The superintendence shall be exercised by the cruisers of the high contracting parties which are charged with the police of the fisheries.

When the officers commanding these cruisers have reason to believe that an infraction of the measures provided for in the present

convention has been committed, they may require the captain or master to exhibit the official documents establishing the nationality of his vessel, and where the case occurs, the license. The fact of such documents having been exhibited shall then be indorsed upon them immediately.

Further, formal statements of the facts may be drawn up by the said officers whatever may be the nationality of the accused vessel. These formal statements shall be drawn up according to the forms and in the language used in the country to which the officer belongs; they may be used as means of proof in the country where they are adduced, and conformably with the laws of that country. The accused and the witnesses shall be entitled to add or to have added thereto, in their own language, any explanations which they may think useful. These declarations must be duly signed.

Resistance to the directions of commanders of cruisers, or of those who act under their orders, shall, without taking into account the nationality of the cruisers, be considered as resistance to national authority.

The commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending vessel into a port of the nation to which she belongs.

Article VIII.

The proceedings in respect of infractions of the provisions of the present convention shall always take place as summarily as the laws and regulations will permit.

Article IX.

The high contracting parties will communicate to each other, at the time of the exchange of ratifications, the laws which shall have been made in their respective countries in relation to the object of the present convention.

Article X.

States which have not signed the present convention may adhere to it on making a request to that effect. This adhesion shall be notified through the diplomatic channel to the Government of the Netherlands, and by the latter to the other signatory powers.

Article XI.

The present convention shall be brought into operation from and after a day to be agreed upon by the high contracting parties.

It shall remain in force for five years from that day, and, unless any of the high contracting parties shall, twelve months before the expiration of the said period of five years, have given notice of its

intention to terminate its operation, it shall remain in force for one year longer, and so on from year to year.

If the Convention of the Hague of the 6th May, 1882, respecting the police of the fisheries, should cease to be in force, Article XXVI. of the same convention shall continue to operate as regards the object of the present arrangement.

Article XII.

The present convention shall be ratified; the ratifications shall be exchanged at the Hague as soon as possible, and, if practicable, within a year.

In witness whereof, the respective plenipotentiaries have signed the present convention, and have thereto affixed their seals.

Done at the Hague, in six copies, the 16th November, 1887.

* * * * *

PROTOCOL.

Whereas it appears from the communications which have been received by the Government of the Netherlands that the Government of the French Republic is not at present in a position to proceed to the ratification of the convention which was signed at the Hague on the 16th November, 1887, for remedying the abuses arising from the traffic in spirituous liquors amongst the fishermen in the North Sea outside territorial waters, the undersigned Plenipotentiaries of Great Britain, of Germany, of Belgium, of Denmark, and Minister for Foreign Affairs of the Kingdom of the Netherlands, having met in conference at the Ministry of Foreign Affairs at the Hague this 14th day of February, 1893, and, being duly authorised to that effect, have agreed as follows:—

1. The above-mentioned convention shall be brought into force by the other signatory Governments, namely, Great Britain, Germany, Belgium, Denmark, and the Netherlands, six weeks after they shall have exchanged the ratifications thereof.

2. The power of adhesion accorded by Article X. of the said convention for non-signatory states is extended to France.

3. In modification of Article XI. of the convention, the periods of five years and twelve months are respectively reduced to one year and to three months.

4. The present protocol, which shall be ratified at the same time as the convention to which it refers, has been drawn up in five copies.

(Signed), etc.

THE MUSIC AND DANCING LICENSES
(MIDDLESEX) ACT, 1894.

(57 & 58 VICT. C. 15.)

*An Act to amend the Law as regards Music and Dancing
Licenses in Middlesex.* [3rd July, 1894.]

Be it enacted, etc., as follows:

Short title. 1. This Act may be cited for all purposes as the Music and Dancing Licenses (Middlesex) Act, 1894.

Music and
dancing
licenses.

2. For the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind, the following provisions shall have effect in the administrative county of Middlesex; namely,

(1) After the thirty-first day of December one thousand eight hundred and ninety-four, a house, room, garden, or other place, whether licensed or not for the sale of wines, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind, without a license for the purpose or purposes for which the same respectively is to be used first obtained from the County Council of Middlesex and for the registration thereof a fee of five shillings shall be paid by the person applying therefor; provided that such fee shall in no case be payable by any applicant in respect of any license granted for the purpose of a charitable or other like entertainment:

(2) The County Council may at any meeting convened with fourteen days' previous notice, or at any adjournment thereof, grant licenses to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and subject to such restrictions, as they by the respective licenses determine, and every license shall be in force for one year or for such shorter period as the County Council on the grant of the

license shall determine, unless the same shall have been previously revoked as herein-after provided :

- (3) The County Council may from time to time at any such meeting aforesaid transfer any such license to such person as they think fit :
- (4) Each person shall in each case give fourteen days' notice to the clerk of the County Council and to the superintendent of police of the police division in which the house, room, garden, or place is situated, of his intention to apply for any such license, or for the transfer of any such license :
- (5) Any house, room, garden, or place kept or used for any of the purposes aforesaid without such license first obtained shall be deemed a disorderly house, and the person occupying, or rated as occupier of, the same shall be liable on summary conviction to a penalty not exceeding five pounds for every day on which the same is kept or used for any of the purposes aforesaid ; and it shall be lawful for any constable, being thereunto authorised by warrant under the hand of one of Her Majesty's justices of the peace for the county of Middlesex, to enter any such house, room, garden, or place so kept or used without such license as aforesaid, and to apprehend every person who shall be found therein in order that they may be dealt with according to law.
- (6) There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid an inscription in large capital letters in the words following : " Licensed in pursuance of Act of Parliament for ," with the addition of words showing the purpose or purposes for which the same is licensed :
- (7) Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes except on the days and between the hours stated in the license : Provided that no such house, room, garden, or other place so kept or used shall be open for any

35 & 36
 Vict. c. 94.

of the purposes aforesaid after midnight and before the hour of noon; save that if on any special occasion an occasional license of exemption shall have been granted under the twenty-ninth section of the Licensing Act, 1872, in respect of any house, room, garden, or other place licensed under this Act, no penalty shall be incurred on account of such house, room, garden, or other place being kept open for any of the purposes aforesaid on such special occasion from midnight until the hour specified in such occasional license as the hour for closing.

- (8) The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such license:
- (9) In case of any breach or disregard of any of the terms or conditions upon or subject to which the license was granted, the holder thereof shall be liable on summary conviction to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a daily penalty (*i.e.* a penalty for each day on which such offence is continued after conviction therefor) not exceeding five pounds, and such license shall be liable to be revoked by the order of the County Council:
- (10) No notice need be given under sub-section (4) of this section when the application is for a renewal of any existing license held by the applicant for the same premises:
- (11) The County Council may, if and as they think fit, grant to any person applying for the same a license to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days, which they shall specify in such license, notwithstanding that no notice shall have been given under sub-section (4) of this section:
- (12) From and after the passing of this Act sections two and three of the Disorderly Houses Act, 1751, and the whole of the Public Entertainments Act, 1875,

25 Geo. II.
 c. 36.
 38 & 39
 Vict. c. 21.

shall be repealed so far as relates to the administrative county of Middlesex: ¹

- (13) Nothing in this Act shall be deemed to interfere with any other enactment respecting the prosecution of persons keeping disorderly houses:
- (14) The powers by this Act conferred upon the County Council shall be in addition to and not in derogation of any of the powers of licensing now vested in the County Council.

THE SUPREME COURT OF JUDICATURE (PROCEDURE) ACT, 1894.

(57 & 58 VICT. C. 16.)

An Act to amend the Supreme Court of Judicature Acts.

[3rd July, 1894.]

Be it enacted, etc.

1.

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Regulations as to
appeals.

(5) In all cases where there is a right of appeal to the High Court from any Court or person, the appeal shall be heard and determined by a Divisional Court, constituted as may be prescribed by rules of Court; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that Court, or by the Court of Appeal.

(6) An application for leave to appeal may be made *ex parte* or otherwise, as may be prescribed by rules of Court.

2. (1) Every case stated by a Court of Quarter Sessions otherwise than under the Acts 11 & 12 Vict. c. 78, and 12 & 13 Vict. c. 45, for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly. Appeals from Quarter Sessions.

(2) On the hearing of any appeal from the Court of Quarter Sessions, the appellate Court may draw any inference of fact which might have been drawn in the Court of Quarter Sessions, and may give any judgment or make any

¹ See p. 243, *ante*.

order which ought to have been given or made by that Court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on it, with the opinion or direction of the appellate Court, for re-hearing and determination by the Court of Quarter Sessions, or may remit the case for re-statement.

(3) On the hearing of any such appeal the appellate Court shall have full power to determine how and by whom the costs of the proceedings in the appellate Court and in the Court of Quarter Sessions are to be borne.

(4) The judgment on any such appeal, or where an appeal to a Court of Quarter Sessions has been directed to be entered for re-hearing, then that appeal shall, on motion by any party to the appeal, be entered at the sessions next or next but one after the delivery of the judgment, or the giving of the direction, and shall, unless the appellate Court otherwise directs, have effect as if the judgment had been given, or, in case of an appeal directed to be re-heard, the appeal had been heard and determined, by the Court of Quarter Sessions at the time of the decision, in respect of which the appeal from Quarter Sessions was brought, and entry and respite of any appeal to Quarter Sessions in respect of which a case has been stated for the consideration of the High Court shall not be necessary.¹

* * * * *

Short title
and com-
mence-
ment.

7. This Act may be cited as the Supreme Court of Judicature (Procedure) Act, 1894, and shall be read with the Judicature Acts, 1873 to 1891, and shall come into operation at the expiration of two months after the passing thereof.

¹ A case stated under 11 & 12 Vict. c. 78 (Crown Cases Act, 1848), is a case stated as to a point of law arising on a conviction, by a judge of Assize or by Quarter Sessions. A case under 12 & 13 Vict. c. 45, § 11 (Quarter Sessions Act, 1849), is a case stated after notice of appeal to Quarter Sessions has been given, by consent and on a judge's order; see *supra*, pp. 60, 330.

THE PREVENTION OF CRUELTY TO
CHILDREN ACT, 1894.

(57 & 58 VICT. C. 41.)

*An Act to consolidate the Acts relating to the Prevention of
Cruelty to, and Protection of, Children.*

[17th August, 1894.]

* * * * *

RESTRICTIONS ON EMPLOYMENT OF CHILDREN.

2. If any person—

- (a) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or
- (b) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine p.m. and six a.m.; or
- (c) causes or procures any child under the age of eleven years, or, having the custody, charge, or care of any such child, allows that child, to be at any time in any street,¹ or in any premises licensed

¹ The word "street" includes any highway or other public place whether a thoroughfare or not; and the expression "local authority" means, as regards any borough in England, the council of the borough; as regards the city of London, the common council; as regards the county of London, the county council; and as regards any other place in England, the district council, and until a district council is established the urban or rural sanitary authority (§ 25).

for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale; or

- (d) causes or procures any child under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous,

that person shall, on summary conviction, be liable, at the discretion of the Court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

Provided that—

- (i.) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object, if such sale or entertainment is held elsewhere than in premises which are licensed for the sale of any intoxicating liquor but not licensed according to law for public entertainments, or if, in the case of a sale or entertainment held in any such premises as aforesaid, a special exemption from the provisions of this section has been granted in writing under the hands of two justices of the peace; and
- (ii.) Any local authority may, if they think it necessary or desirable so to do, from time to time by byelaw extend or restrict the hours mentioned in paragraph (b) of this section, either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein; and

- (iii.) Paragraphs (c) and (d) of this section shall not apply in any case in respect of which a license granted under this Act is in force, so far as that license extends; and
- (iv.) Paragraph (d) of this section shall not apply in the case of a person who is the parent or legal guardian of a child, and himself trains the child.

3. (1) A petty sessional Court, or in Scotland the School Board, may, notwithstanding anything in this Act, grant a license for such time and during such hours of the day, and subject to such restrictions and conditions as the Court or board think fit, for any child exceeding seven years of age,—

Licenses
for employ-
ment of
children.

- (a) to take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid; or
- (b) to be trained as aforesaid; or
- (c) for both purposes;

if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the Court or board may, upon sufficient cause, vary, add to, or rescind any such license.

Any such license shall be sufficient protection to all persons acting under or in accordance with the same.

(2) A Secretary of State may assign to any inspector appointed under section sixty-seven of the Factory and Workshop Act, 1878, specially and in addition to any other usual duties, the duty of seeing whether the restrictions and conditions of any license under this section are duly complied with, and any such inspector shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector has to enter, inspect, and examine a factory or workshop under section sixty-eight of the same Act.

41 & 42
Vict. c. 16.

(3) Where any person applies for a license under this

section he shall, at least seven days before making the application, give notice thereof to the chief officer of police for the district in which the license is to take effect, and that officer may appear or instruct some person to appear before the authority hearing the application, and show cause why the license should not be granted, and the authority to whom the application is made shall not grant the same unless they are satisfied that notice has been properly so given.

(4) Where a license is granted under this section to any person, that person shall, not less than ten days after the granting of the license, cause a copy thereof to be sent to the inspector of factories and workshops acting for the district in which the license is to take effect, and if he fails to cause such copy to be sent, shall be liable on summary conviction to a fine not exceeding five pounds.

39 & 40
Vict. c. 79.
41 & 42
Vict. c. 78.

(5) Nothing in this or in the last preceding section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878.

ARREST OF OFFENDER AND PROVISION FOR SAFETY OF CHILDREN.

Power to
take offend-
ers into
custody.

4. (1) Any constable may take into custody, without warrant, any person—

(a) who within view of such constable commits an offence under this Act, or any of the offences mentioned in the schedule to this Act, where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable; or

(b) who has committed or who he has reason to believe has committed any offence of cruelty within the meaning of this Act, or any of the offences mentioned in the schedule to this Act, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

(2) Where a constable arrests any person without warrant in pursuance of this section, the inspector or constable in charge of the station to which such person is

conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

* * * * *

EVIDENCE AND PROCEDURE.

12. In any proceeding against any person for an offence under this Act or for any of the offences mentioned in the schedule to this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Evidence
of accused
person.

* * * * *

17. Where a person is charged with an offence under this Act, or any of the offences mentioned in the schedule to this Act, in respect of a child who is alleged in the charge or indictment to be under any specified age, and the child appears to the Court to be under that age, such child shall for the purposes of this Act be deemed to be under that age, unless the contrary is proved.

Presump-
tion of age
of child.

18. Summary proceedings against offenders must be taken within six months from the date of the offence.

19. An appeal lies from a conviction to Quarter Sessions where the defendant did not plead guilty.

* * * * *

28. (1) This Act may be cited as the Prevention of Cruelty to Children Act, 1894.

* * * * *

SCHEDULE.

- 24 & 25
Vict. c.
100. Any offence under sections twenty-seven, fifty-five, or fifty-six of the Offences against the Person Act, 1861, and any offence against a child under the age of sixteen years under sections forty-three or fifty-two of that Act.
- 42 & 43
Vict. c. 34. 1879. Any offence under the Children's Dangerous Performances Act, 1879.
- Any other offence involving bodily injury to a child under the age of sixteen years.

PART VIII.
APPENDIX OF FORMS AND
REGULATIONS.

FORMS OF JUSTICES' LICENSES.

I. GRANT OF A NEW LICENSE AND CONFIRMATION OF SUCH
GRANT (LICENSING ACT, 1872).¹

At the general annual licensing meeting [*or* an adjournment
of the general annual licensing meeting], holden at
on the day of 18 ,
for the division of in the county of
[*or* for the borough of]:

(a) We, being of the justices acting for the
said division, and being the majority of those at the said
meeting assembled,

or,

(b) We, being the majority of the members present of the
borough licensing committee, appointed for the said borough
in pursuance of the Licensing Act, 1872,

or,

(c) We being of the justices of the said
borough, and being the majority of those at the said meeting
assembled,

¹ These official forms were issued by the Home Secretary, under § 48 of the Licensing Act, 1872, in July, 1873. In that Act the term "license" is used to describe both a justices' license and a justices' certificate (§ 74).

Hereby grant unto A. B., of [here insert a licensed victualler, beerhouse keeper, coffee-house keeper, confectioner, eating-house keeper, licensed dealer in spirits, a refreshment-house keeper, a wholesale spirit dealer, the holder of a strong beer license, or as the case may be], this license authorising him to apply for and hold [Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.]

The owner of the premises in respect of which this license is granted is M. N., of .

This license shall be in force from the . day of . until the . day of .

Witness our hands.

[Signatures of Justices.]

NOTE.—A license may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, § 40, sub-sect. 3, applying 33 & 34 Vict. c. 29, § 4, sub-sect. 2. *In that case insert, instead of "Witness our hands" —"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, C. D., Clerk of the Licensing Justices," or as the case may be.*

CONFIRMATION.

At a meeting holden at . on the . day of .

(a) We, being the majority of members present of the county licensing committee, appointed for the said county in pursuance of the Licensing Act, 1872, do hereby confirm the grant of the above license.

Witness our hands.

or,

(b) We, being . of the justices of the said borough, and being the majority of those at the said meeting assembled, do hereby confirm the grant of the above license.

Witness our hands.

or,

(c) We, being the majority of the members present of the joint committee, appointed for the said borough

in pursuance of the Licensing Act, 1872, do hereby confirm the grant of the above license.

Witness our hands.

[*Signatures of Justices.*]

(See note to above Form.)

II. RENEWAL OF A LICENSE, 35 & 36 VICT. C. 94, § 74
(LICENSING ACT, 1872).

At the general annual licensing meeting [*or an adjournment of the general annual licensing meeting*] holden at
on the day of , for the
division of , in the county of [*or,*
for the borough of]:

(a) We, being of the justices acting for the
said division, and being the majority of those at the said
meeting assembled,

or,

(b) We, being of the justices of the said
borough, and being the majority of those at the said meeting
assembled,

Hereby grant unto A. B., of [*here insert a*
licensed victualler, beerhouse keeper, coffee-house keeper,
confectioner, eating-house keeper, licensed dealer in spirits,
a refreshment-house keeper, a wholesale spirit dealer, the
holder of a strong beer license, *or as the case may be*], this
renewal license authorising him to apply for and hold
[*Here insert A., or B., or C. . . . or M., as in the*
Appendix, as the case may be.]

The owner of the premises in respect of which this license
is granted is M. N. of .

This license shall be in force from the day
of , until the day of .

Witness our hands.

[*Signatures of Justices.*]

(See note to Form I.)

III. THE SAME BY WAY OF ENDORSEMENT, 35 & 36 VICT. c.
94, § 48 (2).

(To be endorsed on the license, or on a copy thereof.)

At the general annual licensing meeting [*or, an adjournment*
of the general annual licensing meeting] holden at
on the day of , for the
division of in the county of [*or for the*
borough of]:

(a) We, being of the justices acting for the
said division, and being the majority of those at the said
meeting assembled,

or,

(b) We, being of the justices of the said
borough, and being the majority of those at the said meeting
assembled,

Hereby renew the license within contained, and such
license as renewed shall be in force until the day
of .

The owner of the premises in respect to which the license
is granted is M. N. of .

Witness our hands.

[Signatures of Justices.]

(See note to Form I.)

IV. TRANSFER OF LICENSE GRANTED AT SPECIAL SESSIONS, IN
PURSUANCE OF 9 GEO. 4, c. 61, § 4.

At a special sessions holden at on the day
of for the division of in the county
of [*or, for the borough of*]:

(a) We, being of her Majesty's justices of
the peace acting in and for the said division, and being the
majority of those at the said sessions assembled,

or,

(b) We, being of the justices of the said
borough, and being the majority of those at the said meeting
assembled,

Hereby, pursuant to § 4 of the Intoxicating Liquor

Licensing Act, 1828, and the Acts amending the same, license one C. D. of and transfer to him * the license now held by A. B. of [*here insert a licensed victualler, beerhouse keeper, coffee-house keeper, confectioner, eating-house keeper, licensed dealer in spirits, a refreshment-house keeper, a wholesale spirit dealer, the holder of a strong beer license, or as the case may be*], and granted on the day of last, authorising him to hold [*Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.*]

* [*If by endorsement, say from the asterisk* * the license within contained now held by the within-named A. B.]

And we hereby authorise the said C. D. to apply for and hold [*in the case of alehouses insert, any of the said excise licenses, as now held, as well as those which were not held by the said A. B.:—in other cases insert, the said excise license so held by the said A. B.*]

This transfer to be in force from this day until the .

Witness our hands.

[*Signatures of Justices.*]

(See note to Form I.)

V. GRANT OF LICENSE AT SPECIAL SESSIONS, IN PURSUANCE OF 9 GEO. IV., c. 61, § 14.

At a special sessions holden at on the day of , for the division of in the county of [*or, for the borough of*]:

(a) We, being of the justices acting for the said division, and being the majority of those at the said sessions assembled,

or,

(b) We, being of the justices of the said borough, and being the majority of those at the said sessions assembled,

Hereby, pursuant to § 14 of the Intoxicating Liquor Licensing Act, 1828, and the Acts amending the same, grant unto A. B., of [*here insert a licensed victualler,*

beerhouse keeper, coffee-house keeper, confectioner, eating-house keeper, licensed dealer in spirits, a refreshment-house keeper, a wholesale spirit dealer, the holder of a strong beer license, *or as the case may be*], this license authorising him to apply for and hold [Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.]

The owner of the premises in respect of which this license is granted is M. N., of .

This license shall be in force from the . day of
until the . day of .

Witness our hands.

[Signatures of Justices.]

(See note of Form L.)

APPENDIX CONTAINING DESCRIPTIONS OF THE SEVERAL LICENSES.

(For insertion in the above skeleton Forms.)

A.

Alehouse License (On or Off).

Any of the excise licenses that may be held by a publican for the sale by retail, at a house situated at ., known by the sign of the ., of intoxicating liquor, to be consumed either on or off the premises.

If the license be a six-day license add as a separate paragraph:—

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

B.

Beerhouse License (Off).

An excise license to sell by retail at a house situated at . beer to be consumed off the premises, in pursuance of the Act 11 Geo. IV. & 1 Will. IV., c. 64, and Acts amending the same.

C.

Beerhouse License (On or Off).

An excise license to sell by retail at a house situated at ., beer to be consumed either on or off the premises, in pursuance of the Act 11 Geo. IV. & 1 Will IV., c 64, and Acts amending the same.

If the license be a six-day license add as a separate paragraph :—

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

D.

Cider and Perry License (On or Off).

An excise license to sell by retail at a house situated at _____, cider and perry, to be consumed either on or off the premises, in pursuance of the Act 11 Geo. IV. & 1 Will. IV., c. 64, and Acts amending the same.

If the license is a six-day license add as a separate paragraph :—

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

E.

Additional License to Strong Beer Dealers.

An additional excise license to sell by retail at a house situated at _____, beer, to be consumed off the premises, in pursuance of the Act 26 & 27 Vict. c. 33, § 1.

F.

Table Beer License (Off).

An excise license to sell by retail at a house situated at _____ table beer, to be consumed off the premises, in pursuance of the Act 24 & 25 Vict. c. 21, § 3.

G.

Wine License to Shopkeeper (Off).

An excise license to sell by retail at a shop situated at _____ wine, to be consumed off the premises, in pursuance of the Act 23 Vict. c. 27, § 3, and Acts amending the same.

H.

License for Wine to a Refreshment-house Keeper, Confectioner, or Eating-house Keeper (On or Off).

An excise license to sell by retail at a house situated at _____ wine, to be consumed either on or off the

premises, in pursuance of the Act 23 Vict. c. 27, §§ 7 and 8, and Acts amending the same.

If the license is a six-day license add as a separate paragraph :—

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

I.

A Licensed Dealer's Additional Spirit License (Off).

An ADDITIONAL excise license to sell by retail at a shop situated at spirits, to be consumed off the premises, in pursuance of the Act 24 & 25 Vict. c. 21, § 2.

K.

License for Liqueurs in Shops (Off).

An excise license to sell by retail at a shop situated at liqueurs, to be consumed off the premises, in pursuance of the Acts 11 & 12 Vict. c. 121, and 23 & 24 Vict. c. 114, and Acts amending the same.

L.

License for Sweets to a Refreshment-house Keeper, Confectioner, or Eating-house Keeper (On or Off).

An excise license to sell by retail at a house situated at sweets, to be consumed either on or off the premises, in pursuance of the Act 6 Geo. IV., c. 81, and Acts amending the same.

If the license is a six-day license add as a separate paragraph :—

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

M.

Sweets License to Shopkeeper (Off).

An excise license to sell by retail at a shop situated at sweets, to be consumed off the premises, in pursuance of the Act 6 Geo. IV., c. 81, and Acts amending the same.

FORMS OF EXCISE RETAIL LIQUOR LICENSES.

PUBLICAN'S LICENSE, 6 GEO. IV., c. 81 ; 43 & 44 VICT. c. 20.

No.

Collection.

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to
 residing in a house situate at _____ in the parish of
 within the administrative county ¹ _____ of
 and known by the sign of _____ to exercise
 and carry on the trade or business of a retailer of spirits
 in the said house, and to sell by retail therein, spirits, wine,
 sweets, made wines, mead, metheglin, beer, cider, and
 perry, to be consumed either on or off the premises, from the
 day of the date hereof, until and including the tenth day of
 October next ensuing, such house and premises being rented
 or valued at the rent or annual sum of £ _____ ; and
 I also hereby grant license to him to deal in and sell tobacco
 and snuff during the term above mentioned, he having paid
 for this license, being ² _____ license, the under-
 mentioned duties, amounting together to the sum of £ _____

Dated this _____ day of _____ 18 .

	£	s.	d.
Retailer of spirits	...	"	"
Dealer in tobacco	...	"	"
Total	... £	"	"

Collector of Inland Revenue.



NOTE.—This license, so far as it relates to the sale of intoxicating liquors, becomes void if the magisterial license granted to the licensee is forfeited in pursuance of "The Licensing Act, 1872," or becomes void under any of the provisions of that Act (see 35 & 36 Vict. c. 94, s. 63).

¹ If the residence is within an administrative county borough insert "borough."

² Insert here the words "an ordinary," or "a six-day," or "an early closing," or "a six-day and early closing," as the case may be, according to the justices' certificate.

OCCASIONAL LICENSE.

No.

Collection.

District.

(25 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, §§ 19, 20; 27
 Vict. c. 18, § 5; 37 & 38 Vict. c. 49, §§ 18, 19, 20;
 37 & 38 Vict. c. 69, §§ 4, 5, 6.)

I, the undersigned, duly authorised by the Commissioners
 of Inland Revenue, hereby grant license to
 of¹ within the administrative county² of
 to sell on the day of
 189 , between the hours of o'clock in the forenoon
 and o'clock in the afternoon (*being not earlier
 than sunrise nor later than ten o'clock at night, unless the occasion
 be a public Dinner or Ball*), in a situate at
 within the administrative county² of
 on the occasion of he being a person duly
 licensed to sell the same at the premises first above-mentioned,
 and having produced to me the consent of a Justice of the
 Peace for the grant of this license, as required by the enact-
 ments in that behalf.

Dated this day of 189 .

£ s. d.
 Duty paid „ „ .

Collector.

Supervisor.



This license does not protect the person to whom it is granted, unless,
 at the time of sale, he produces it when requested so to do by any Officer
 of Inland Revenue, or by any constable or police officer.

NOTE.—When a licensed victualler has taken out an occasional
 license for six successive days, and desires to take out another occasional
 license for a time in immediate succession, or only separated by the
 intervention of Sundays and holidays, then the duty chargeable for any
 license after the first is 2s. 6d. a day for the first four days, but no
 greater charge than 10s. is to be made for a license for five or six days.

¹ In filling up the license follow the form of justice's consent.

² If the residence is within an administrative county borough insert
 "borough."

REFRESHMENT HOUSE LICENSE,

23 & 24 VICT. CC. 27 & 107, AND ACTS AMENDING THE SAME.

No.

Collection.

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to now being a householder, and dwelling in a house in in the parish of within the administrative county¹ of to keep open the said house as a Refreshment House, and to sell any victual or refreshment to be consumed therein, and in the premises thereunto belonging (provided that for the sale of any exciseable or intoxicating liquor he shall have in force a proper license granted to him in that behalf), and for this license he hath paid the sum of the said house and premises being of² the value of thirty pounds a year; and this license is granted upon condition that the said do not wilfully or knowingly permit any drunkenness, or any violent or quarrelsome or other disorderly conduct, in his house or premises, nor knowingly suffer any unlawful games or any gaming whatsoever therein, nor knowingly suffer or permit persons of known bad character to assemble and meet together therein, but do maintain good order and rule therein: And this license shall continue in force from the day of the date hereof until the first day of April next ensuing; and this license shall cease and determine, and shall become void, in case any of the conditions or regulations contained therein shall be transgressed or shall not be observed.

Dated this day of 18 .

Collector of Inland Revenue.



¹ If the residence is within an administrative county borough insert "borough."

² Or "under," as the case may be.

WINE LICENSE.

On and off the Premises.

No.

Collection.

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to _____ to sell by retail at a house situate at ¹ _____ in the parish of _____ within the administrative county ² _____ of _____ wine, sweets, made wines, mead and metheglin, to be consumed either on or off the premises, from the day of the date hereof until the first day of April next ensuing; he having paid for this license, being ³ _____ license, the sum of _____

Dated this

day of

18 .

Collector of Inland Revenue.



NOTE.—The license becomes void if the magisterial license on the authority of which it has been granted is forfeited in pursuance of "The Licensing Act, 1872," or becomes void under any of the provisions of that Act (see 35 & 36 Vict. c. 94, § 63).

This license only authorises the sale of wine, etc., in a less quantity than two gallons, or if sold in reputed quart bottles in less than one dozen such bottles at one time. The sale of any larger quantity will subject the holder of the license to a penalty.

THEATRE LICENSE,

5 & 6 WM. IV., c. 39, § 7; 43 & 44 VICT. c. 20.

No.

Collection.

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to _____ to sell by retail, in the _____ theatre, situate in _____, in the parish of _____ within the administrative county ² _____ of _____ spirits, wine, sweets, made wines, mead, metheglin, beer, cider, and perry, from _____

¹ In this blank specify the street, or other description that will serve to identify the house.

² If the residence is within an administrative county borough insert "borough."

³ Insert here the words "an ordinary," or "a six day," or "an early closing," or "a six day and early closing," as the case may be.

the day of the date hereof, until the tenth day of October next ensuing, in accordance with the terms of the license granted by ² such theatre being rented or valued at the rent or annual sum of £ and he having paid for this license the sum of £

Dated this day of 189 .

Collector of Inland Revenue.

PASSENGER BOAT LICENSE.

For the Sale of Spirits, Wine, Sweets, made Wines, Mead, Metheglin, Beer, Cider, Perry, and Tobacco on board.

9 GEO. IV., c. 47 ; 4 & 5 WM. IV., c. 75 ; 43 & 44 VICT. c. 20.

Five Pounds.

No.

Collection.

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to ³ the master or commander of [a person belonging to] a boat or vessel employed for the carriage and conveyance of persons going as passengers, named the of within the administrative county ¹ of [he having been nominated and approved by the owner or owners, or director or directors thereof, residing in the United Kingdom, by their writing and subscribing a certificate or declaration, which has been delivered by them to the person appointed for that purpose by the said Commissioners], to provide for, and to supply retail and sell to, the passengers on board such vessel, to be consumed by them in and on board thereof during the voyage on which such passengers shall be carried and conveyed, spirits, wine,

¹ If the residence is within an administrative county borough, insert "borough."

² Insert "the Lord Chamberlain" or "two justices," as the case may be.

³ Alter this description according as the license may be the master or commander of, or a person belonging to, the vessel.

sweets, made wines, mead, metheglin, beer, cider, perry, and tobacco, from the day of the date hereof until and including the thirty-first day of March next ensuing, he having paid the sum of five pounds for this license.

Dated this day of 189 .

Collector of Inland Revenue.




THEATRICAL LICENSES AND REGULATIONS.

LORD CHAMBERLAIN'S LICENSE FOR A NEW STAGE PLAY.

It having been represented to me by the Examiner of All Theatrical Entertainments that a does not in its general tendency contain any thing immoral or otherwise improper for the stage, I, the Lord Chamberlain of Her Majesty's household, do by virtue of my office and in pursuance of the Act of Parliament in that case provided allow the performance of the said at your with the exception of all words and passages which are specified by the examiner in the endorsement of this license and without any further variations whatsoever.

Given under my hand this day of
18 .

*Lord Chamberlain.*¹



To the Manager of the

¹ The following memorandum is printed on the back of all stage-play licenses granted by the Lord Chamberlain.

"*Mem.*—The particular attention of the management is called to the following regulations, which refer to all stage plays licensed by the Lord Chamberlain. The strict observance of these regulations is to be considered as the condition upon which the license is signed.

"Notice of the change of title of a piece to be given to the Examiner of Plays. No profanity or impropriety of language to be permitted on the stage. No indecency of dress, dance, or gesture to be permitted on the stage. No offensive personalities or representations of living persons to be permitted on the stage, nor anything calculated to produce riot or breach of the peace."

LORD CHAMBERLAIN'S THEATRE LICENSE AND THE RULES
AND REGULATIONS ANNEXED THERETO.

I do hereby give leave and license unto _____ to
have stage plays performed at _____ situate in the
parish of _____ in the county of _____ upon
every day during the currency of this license, with the
exception of the Lord's Day (commonly called Sunday),
Christmas Day, and Good Friday, upon the understanding
that the above-named actual and responsible manager shall
be subject to the rules and regulations annexed to this
license.

This license will remain in force from the _____
until the _____ inclusive, unless at any time during
such period the above-named _____ shall wilfully
infringe any of the rules and regulations annexed to this
license.

In case of any such infringement being committed, this
license shall forthwith be determined, and be of no effect.

Given under my hand and seal this _____ day of
18 _____, in the _____ year of Her Majesty's
reign.

Lord Chamberlain.



*Rules and Regulations with Regard to Theatres in the
Jurisdiction of the Lord Chamberlain.*

1. All doors and barriers to open outwards, or to be fixed
back during the time when the public are within the
theatre.

2. All gangways, passages, and staircases, intended for
the exit of the audience, to be kept entirely free from chairs
or any other obstructions, whether permanent or temporary.

3. An ample water supply with hose and pipes to be
available to all parts of the house, where possible on the
high pressure main.

4. All fixed and ordinary gas burners to be furnished
with efficient guards. Moveable and occasional lights to be,
where possible, protected in the same manner, or put under

charge of persons responsible for lighting, watching, and extinguishing them. A separate and independent supply of light for the stage and auditory.

No white metal gas pipes to be used in the building.

5. The foot-lights or floats to be protected by a wire guard. The first ground-line to be always without gas, and unconnected with gas, whether at the wings or elsewhere. Sufficient space to be left between each ground-line, so as to lessen risk from accident to all persons standing or moving among such lines.

6. The rows or lines of gas burners at wings to commence four feet at least from the level of the stage.

7. Wet blankets or rugs, with filled buckets or water-pots to be always kept in the wings; and attention to be directed to them by placards legibly printed or painted, and fixed near them. As in Rule 4, some person to be responsible for keeping the blankets, buckets, &c., ready for immediate use.

8. Hatchets, hooks, or other means to cut down hanging scenery in case of fire, to be always in readiness. NOTE.¹

9. The regulations as to fire to be always posted in some conspicuous place, so that all persons belonging to the theatre may be acquainted with their contents. A report of any fire, or alarm of fire, however slight, to be at once sent to the Lord Chamberlain's office.

10. Counter weights, where possible, to be carried to the walls of the building, and cased in. The ropes attached to them to be constantly tested.

11. An annual inspection is made of all theatres. It is expected that all alterations suggested for the safety and convenience of the public will be carried out before the issue of the annual license.

12. No structural alterations to be made in the theatre without the sanction of the Metropolitan Board of Works.

¹ NOTE.—The Committee of the House of Commons in their report on fires in theatres in 1877, recommend "with respect to the daily management of the theatre, naked lights should be protected; inflammable materials should not be allowed to be placed where they are likely to catch fire; the hose and other apparatus should be maintained in good order; the passages should be kept clear, and a plan settled beforehand of what should be done in the case of a fire or panic, each of the employes being instructed as to the place he is to take, and the duties he is to perform, and all being occasionally drilled together for the purpose."

Plans of such alterations to be sent to the Lord Chamberlain's office.

13. A copy of every new piece, or alterations of old pieces intended to be produced, to be forwarded for license to the Examiner of Plays, seven clear days before such intended production. No alteration of the text when licensed for representation to be permitted without sanction.

14. Copies of all play bills to be sent to the Lord Chamberlain's office every Monday, and whenever a change of performance is announced.

15. Notice of the change of title of a piece to be given to the Examiner of Plays.

16. The name and private address of the actual and responsible manager to be printed in legible type at the head of each bill.

17. Admission to be given at all times to authorised officers of the Lord Chamberlain's department, and of the police.

18. No profanity or impropriety of language to be permitted on the stage.

19. No indecency of dress, dance, or gesture to be permitted on the stage.

20. No offensive personalities or representations of living persons to be permitted on the stage, nor any thing calculated to produce riot or breach of the peace.

21. No exhibition of wild beasts or dangerous performances to be permitted on the stage. No women or children to be hung from the flies, nor fixed in positions from which they cannot release themselves.

22. No masquerade or public ball to be permitted in the theatre.

23. No encouragement to be given to improper characters to assemble, or to ply their calling in the theatre.

24. Refreshments to be sold in the theatre only during the hours of performance, only to the audience and company engaged in the house, and only in positions which do not interfere with the convenience and safety of the audience.

25. No smoking to be permitted in the auditorium.

26. Theatre licenses are granted for one year, from the 29th of September. Licenses are granted also for shorter periods, but all licenses cease on the day above-mentioned.

27. No public entertainment to be given in the theatre on the days excluded from the license.

28. Applications for licenses, with the names and addresses of the actual and responsible manager and of his two proposed sureties, who must be resident householders and ratepayers, must be forwarded to the Lord Chamberlain's office seven clear days before the day for which the license is required.

29. Theatre licenses are granted after consultation with the London County Council so far as the structural condition of the theatres is concerned, only for buildings in which the above regulations can be carried out, and on the express condition that these and every other reasonable and practicable precaution against fire or the dangers arising therefrom are adopted.

30. The manager is held solely and entirely responsible for the carrying out of the above regulations, for the management of his theatre before and behind the curtain, and for the safety of the public and the members of his company.

31. All exits from the theatre must be plainly indicated by placards, and kept always available for the use of the audience.

32. The service of light for the auditorium and entrance passages must be separate from that for the stage.

MUSIC, MUSIC AND DANCING, AND STAGE PLAYS LICENSES.

ORDERS MADE BY THE LONDON COUNTY COUNCIL AS THE LICENSING AUTHORITY UNDER THE LOCAL GOVERNMENT ACT, 1888.¹

I.—MUSIC AND MUSIC AND DANCING LICENSES.

1. All applications for licenses shall be made to the Theatres and Music-halls Committee of the London County Council, sitting as the licensing committee, referred to hereafter as "the committee," who shall investigate the same,

¹ These regulations were approved by the Council on the 27th July, 1897.

and report the result of their investigation to the council sitting as the licensing authority.

All licenses will be granted or refused by the council.

2. Applications in respect of premises situated on the North of the Thames will be heard at the Sessions House, Clerkenwell, and those in respect of premises on the South of the Thames at the Sessions House, Newington. The committee, however, reserve to themselves the power to hear any particular application at either of the above places, or at such other place as they may hereafter determine upon.

3. Every person intending to apply for a license at the annual meeting of the committee to be held in the month of November shall, on or before the 1st day of September in each year, give notice to the clerk of the London County Council of such intended application (*see paragraph 19*).

4. Notice of intended application when given on behalf of any company registered under the Companies Acts must be signed by a responsible officer of the company, and proof of his appointment must be forthcoming if required by the committee.

5. Every applicant shall also at the same time give notice of such application in similar form to the clerk of the vestry or district board under the Metropolis Management Act, 1855, and to the churchwardens and overseers of the division, district, parish, or place, in which the premises are situated.

6. Every applicant shall, within seven days after serving the notice of intended application on the clerk of the council, affix and, until the application has been dealt with, maintain upon the outer door or other conspicuous part of the premises sought to be licensed, at a height of five feet above the footway, a copy of such notice printed in large type, known as "Two-line English Roman," so that the same can be seen and read by persons in a public street or place.

7. Every applicant shall send to the clerk of the council, seven clear days at least before the day appointed for the hearing of his application by the committee, a statutory declaration that he or his agent has duly published and served all the notices prescribed by these orders.

Where the notices have been served by an agent, a joint statutory declaration must be furnished.

8. If a person who has given notice of his intention to apply for a license under any of the above orders vacates the premises in respect of which the license is sought, or dies before the application is heard, the new tenant occupying the house, or the legal representative of the deceased person, may be heard in place of the original applicant if the committee think fit.

9. An applicant for a renewal of a license need not attend before the committee unless notice of opposition to the renewal has been given, or he has been specially required to do so by the clerk of the council.

10. All licenses will be granted subject to the regulations of the council, as now in force, or varied from time to time, in reference to arrangements for the safety and protection of the public.

11. Forms of application and all other documents required can be obtained on personal or written application to the clerk of the council, Spring Gardens, S.W.

New Applications.

12. Every applicant for a license for premises in respect of which no current license is in force shall, in addition to the notice required to be given by the foregoing orders, give similar notice by advertisement in three daily newspapers circulating generally throughout the county (to be prescribed from time to time by the council), and shall transmit one copy of each such newspaper containing the advertisement of such notice to the clerk of the council.

Such advertisement shall be inserted by the applicant within four weeks after serving the notice of the intended application upon the clerk of the council.

13. Applications for licenses must be supported by satisfactory documentary evidence that the applicant is owner or lessee (for at least one year certain) in possession of the premises in respect of which the license is required.

14. No application for a new license will be entertained unless the premises for which the license is required have been approved by the council.

15. Applicants for new licenses must attend personally before the committee, and if required by the clerk of the council must also attend before the council.

Transfers.

16. Applications for the transfer of an existing license from the holder thereof to any other person may be heard at any meeting of the committee, except during the months of August, September, and October, provided—

- (a) That notice of the intended application for such transfer shall have been made at least one month before the meeting of the committee at which such application is to be considered.
- (b) That a copy of such notice has been served upon the commissioner of police, the churchwardens and overseers of the division, district, parish or place in which the premises are situated, fourteen days at least before the hearing of the application.
- (c) That evidence as to the character of the person to whom the license is proposed to be transferred shall be furnished to the committee.
- (d) That the application is supported by satisfactory documentary evidence that the proposed transferee is owner or lessee (for at least one year certain) in possession of the premises in respect of which the license is required.

17. Applicants for transfers must attend personally before the committee, and if required by the clerk of the council, must also attend before the council.

18. Orders 4 and 7 apply equally to transfers.

Baths and Washhouses.

19. Applications for licenses in respect of any baths erected under the Baths and Washhouses Acts may be heard at the annual licensing sessions of the committee, or at any other meeting of the committee.

All applications will be reported upon by the committee to the council for its decision.

Such applications must be made in accordance with Nos. 1 to 15 of these orders, except that they may be heard at any meeting after the expiration of one month from the date of the notice to the clerk of the council.

Stage Plays Licenses.

20. Applications for annual licenses for theatres and premises for the performance of stage plays outside the jurisdiction of the Lord Chamberlain must be made in accordance with Nos. 1 to 15 of these orders. The licenses, if granted, shall be subject to the provisions of the Act for regulating theatres (6 & 7 Vict., chap. 68), save as to the provision requiring the signatures of the justices.

Applications for dramatic performances of a temporary character may be heard at any meeting of the committee.

Provisional Licenses.

21. Applications for provisional licenses for premises about to be constructed, or in course of construction or rearrangement, must be made in accordance with Nos. 1 to 15 of these orders.

A provisional license will not enable the premises to be used for public entertainments until such license has been confirmed by the council. Such confirmation can take place at any meeting of the council held during the year, provided the committee report that the premises have been satisfactorily completed.

II.—MODE OF MAKING OBJECTION TO APPLICATIONS FOR LICENSES.

22. No objection made by any person other than a member of the council to the granting or renewal of any license shall be heard by the committee unless a notice of such objection, setting forth the grounds upon which the opposition is made, and where definite offences are alleged, the dates and particulars of such offences, has been received by the clerk of the council and by the applicant fourteen clear days before the day appointed for the hearing by the committee.

On the hearing of the case before the committee it shall not be competent for any person (other than a member of the council) objecting to the granting or renewal of any license to go into any matter not set forth in such notice.

III.—PROCEDURE TO BE OBSERVED AT THE HEARING OF
APPLICATIONS BY THE COMMITTEE.

23. Applications for licenses will be heard by the committee in the order in which they appear in the list compiled by the clerk of the council, except that applications which are opposed will be heard last. The committee may, in the exercise of their discretion, take any application out of its proper order, or postpone it.

24. The meetings of the committee shall be open to the public. The committee shall, however, conduct their deliberations and consider their report to the council upon the applications in private.

25. Every applicant for a license, and every person objecting to the granting thereof, who shall have given the notices required by these orders, shall be heard, either personally or by counsel, and shall be entitled to call witnesses.

26. The order of hearing shall be as follows:—

- (a) On the case being called each person objecting shall be heard in person or by counsel in the order of the date of his notice of objection, and, after stating his grounds of objection, may call witnesses in respect thereof.
- (b) The applicant or his counsel may then call witnesses, and may be heard in reply to objections.
- (c) On the hearing of applications for new licenses, this order of procedure shall be reversed, and the applicant shall in every case be heard first.

27. Where a member of the council, or of the committee, makes an allegation for or against any application in regard to a license, and such allegation is unsupported by the evidence of any other person or persons, the party affected thereby, or his counsel, shall be permitted to put questions through the chairman by way of cross-examination.

28. The above rules will, so far as practicable, be observed at all the licensing meetings of the committee held during the year, except where the committee may otherwise determine.

C. J. STEWART,
Clerk of the Council.

COUNTY COUNCIL OF MIDDLESEX.—MUSIC,
DANCING, AND STAGE PLAY LICENSES.

STANDING ORDERS MADE BY THE COUNTY COUNCIL ON THE
25TH APRIL, 1895.

THE expression “premises” means, generally, the premises licensed, and particularly any theatre, house, or other place, for the performance of stage plays, or any house, hall, room, school, garden, or other place used by virtue of any license, for public music, singing, dancing, or other entertainments of the like kind.

Applications for annual music, dancing, or stage play licenses will be considered at the meeting of the licensing committee, to be held in November in each year. Applications for temporary licenses will be considered at such times as the licensing committee may appoint.

Persons intending to apply for music, dancing, or stage play licenses, shall observe the following rules and regulations :—

NEW APPLICATIONS FOR ANNUAL MUSIC, DANCING, OR STAGE
PLAY LICENSES.

1. Applicants shall

- (a) On, or before, the 14th day of September, in each year send to the clerk of the County Council of Middlesex, a notice of the intended application on a printed form,¹ a copy of which will be supplied by him.
- (b) Between the 1st and 14th of September, in each year, affix, and keep affixed for fourteen days, upon the outer door, or other conspicuous part, of the premises sought to be licensed, at a height of five feet above the footway, a notice in a form to be supplied by the clerk of the council, and also serve a copy of the notice on the inspector of police of the district in which the premises sought to be licensed are situate.

¹ Printed copies of these forms in blank will be supplied on application to the clerk of the council.

- (c) Between the 1st and 14th of September in each year serve copies of the notice upon the surveyor of the urban district council of the district (or where there is no urban district council, the clerk of the parish council or parish meeting), in which the premises sought to be licensed are situate.
- (d) Lodge with the clerk of the County Council, not later than October the 14th,
- (1) a statutory declaration¹ proving the following facts :—
- (A) the affixing of the notice prescribed by these orders :
 - (B) the due service of notices as so prescribed; the names of the persons served with notice; the date of service in each case; and
- (2) in the case of stage play applications a statement showing the names and addresses of the sureties proposed by the applicant.
- (3) A statement (on foolscap size paper) defining the nature of the interest of the applicant in the premises sought to be licensed.
- (4) Plans, drawn to a scale of not less than one-eighth of an inch to a foot, and elevations and sections of the premises, the portions sought to be licensed being indicated by a blue colour.
- (5) A block plan, drawn to a scale of not less than one inch to twenty feet, showing the position of the premises sought to be licensed, in relation to the premises adjacent.
- (6) In the case of new buildings, a specification of the works which have been executed and a specification describing the materials employed, and the mode of construction adopted, together with such other particulars as may be necessary to enable the licensing committee and its officers to judge whether the

¹ Printed copies of these forms in blank will be supplied on application to the clerk of the council.

requirements of these orders have been complied with,

- (7) A statement on foolscap paper of
 - (A) the superficial area of any hall, room, or place, proposed to be used for the purpose or purposes for which the license is sought ;
 - (B) the number of persons proposed to be accommodated ; and
 - (C) the space to be assigned to each person.

2—17. Building regulations.¹

RENEWAL APPLICATIONS FOR ANNUAL MUSIC, DANCING, OR
STAGE PLAY LICENSES.

18. Applicants shall

- (a) On, or before, the 14th day of October, in each year send to the clerk of the County Council of Middlesex, a notice of the intended application on a printed form, a copy of which will be supplied by him.
- (b) Lodge with the clerk of the council on, or before, the 1st of November in each year a statutory declaration, on a form to be supplied by him, stating that the regulations made by the County Council in that behalf have throughout the previous year been complied with.
- (c) Lodge with the clerk of the County Council on, or before, the 1st of November in each year—if required by notice by registered letter sent fourteen days previously—a statement as to the nature of his interest in the premises, and such plans and other documents and information as may be required by the notice, and are prescribed in the case of applications for new licenses.
- (d) In the case of stage play applications, lodge with the clerk of the County Council, a statement showing the names and addresses of the sureties proposed by the applicant.

¹ See *post*, p. 540.

ANNUAL LICENSES.

Transfer Applications.

19. Applications for the transfer of an existing license may be heard at any meeting of the committee, except during the months of August and September, provided—

- (a) That notice¹ of such transfer shall have been served on the clerk of the council at least fourteen days before the meeting of the committee at which the application is to be considered. Such notice shall set forth the name of the transferee, his residence, place or places of business, for twelve months previously, and his trade or calling for the like period, and shall be signed by the transferee.
- (b) That a copy of such notice has been served upon the inspector of police of the district in which the premises are situated, fourteen days at least before the hearing of the application.
- (c) That applicants for transfers must attend the committee personally, and produce the lease or agreement by virtue of which they hold possession.
- (d) If the license to be transferred is for stage plays a fresh bond and sureties will be required.

20. All licenses so transferred are subject to all the rules and regulations of the council, and the conditions on which the former license was granted.

REGULATIONS TO BE OBSERVED BY APPLICANTS FOR TEMPORARY
LICENSES FOR PERIODS LESS THAN A YEAR.

(N.B.—In no case is a temporary license to extend over the annual licensing meeting.)

21. Applicants for a temporary license shall:—

- (a) Send to the clerk of the County Council, at least fourteen days before the meeting of the committee at which the application is to be considered, a notice of the intended application, on a form, copy of which will be supplied by him.

¹ Printed forms of this notice will be supplied on application to the clerk of the County Council.

- (b) And if for a stage play license, send with the notice, a statement showing names and addresses of the sureties proposed by the applicant.
- (c) Serve at the same time a copy of the notice on the inspector of police for the district in which the premises sought to be licensed are situate.
- (d) Affix, and keep affixed, for fourteen days from the date of giving notice of the application for a license, on the outer door or other conspicuous part of the premises, at a height of five feet above the footway, a copy of the notice of application.
- (e) Make and deliver to the clerk of the council, three days before the date of the meeting of the licensing committee, the usual declaration of service of the notices.¹
- (f) Deposit with the clerk of the council at the time of making the application, if they have not already been deposited,
 - (1) Plans drawn to a scale of not less than one-eighth of an inch to a foot, and elevations and sections of the premises.
 - (2) A block plan drawn to a scale of not less than 1 inch to 20 feet, shewing the position of the premises sought to be licensed in relation to the premises adjacent.
 - (3) A statement on foolscap paper giving the superficial area of the hall, and the number of persons proposed to be accommodated.
- (g) If the license is for stage plays, enter into a bond himself in £200, and two sureties in £50 each, for the due observance of the rules and regulations of the council. Provided that where a license is for a charitable purpose, the bond shall be for £25, and the sureties £10 each.

¹ Forms of declaration can be obtained on application to the clerk of the council.

TEMPORARY LICENSES, NOT EXCEEDING FOURTEEN DAYS.

22. In special cases of temporary licenses for periods not exceeding fourteen days in duration, where it would cause inconvenience to the applicant, if the application has to stand over until the ordinary monthly meeting of the licensing committee, the chairman of the committee and one member of the committee of the parliamentary division within which the premises sought to be licensed are situate, be empowered to grant licenses for a period not exceeding fourteen days, subject to their being satisfied that the premises may be safely licensed, and that the applicant has complied with standing order No. 21, and has obtained the usual certificate from the county surveyor, that the premises for which the license is sought are suitable for the purpose.

Provided always that, in the event of the chairman of the committee being absent or unable to act, any other member of the committee may act under this standing order in his stead.

GENERAL REGULATIONS.

The Middlesex County Council standing orders further provide by way of general regulations (*i.a.*) as follows:—

Applications for a stage play license, made to the licensing committee, shall not be countersigned, sealed, or submitted to any justice, and the license need not be publicly read at any meeting by the clerk of the County Council, and need not be signed by more than two members of the committee (23).

Prior to the hearing of any application for a music or music and dancing license, the applicant (unless the license is for a charitable entertainment) must pay a registration fee of 5s. For a stage play the registration fee is 5s. for each month or part of a month covered by the license (24).

The bond required of a grantee of a stage play license is a bond of £200, and for the two sureties £50 each; if the license is for a charitable entertainment the bond is one of £25, and the sureties £10 each (25).

Objections to licenses, unless made by a member of the council or by the police, must be made by petition lodged with the clerk at least fourteen days in the case of annual licenses, and seven days in other cases, before the meeting at which the application is heard. The petition must set out the grounds of objection, and notice must be given to the applicant that it has been lodged with the clerk. Only objections by ratepayers or residents in the locality where the premises are situate will be entertained. If, on the hearing of an application for renewal, objection is raised by a member of the council or by the police, there must be an adjournment for at least seven days (27, 28, 29, 30).

The applicant for a new license should attend in person. The applicant for a renewal need not attend unless requested by letter to do so (31).

The council may require evidence by affidavit, or by a statutory declaration, as well as oral evidence (35).

Applications on behalf of any company registered under the Companies Acts must be signed by the registered officer of the company, and proof of his appointment must be given if required by the committee (45).

Notices required by these standing orders may be served personally or by post (46).

BUILDING REGULATIONS TO BE OBSERVED IN NEW APPLICATIONS FOR MUSIC, DANCING, OR STAGE PLAY LICENSES IN MIDDLESEX.

2. Premises sought to be licensed must be enclosed by external walls of brick or stone, or partly of brick and partly of stone. The thickness of such walls shall not be less than that prescribed by the bye-laws of the local authority for the district in which the premises are situate, for buildings of the warehouse class of similar dimensions.

3. In any house or other place of public resort, licensed for music, or for music and dancing, or for stage plays, where a proscenium shall be erected, the proscenium wall shall be of brick, not less than thirteen inches in thickness, and shall be carried up to a height of three feet above the roof, and be carried down below the stage, to the level of the foundation of the external walls. No openings shall be

formed in the proscenium wall, with the exception of a doorway into the orchestra, and one doorway on each side of the stage for communication with the auditorium. These doorways shall not be more than three feet six inches wide, and shall be closed with iron doors, fixed without woodwork. The decoration round the proscenium shall be constructed of fire-resisting materials, and fire curtains of iron, asbestos, or some other non-inflammable substance shall be provided.

4. In the case of halls, occasionally used for theatrical purposes, where no permanent proscenium is in existence, a temporary proscenium may, with the consent of the licensing committee, be erected, provided such proscenium, curtain, scenery, and woodwork be painted with fire-resisting paint, or solution, of a kind to be approved by the county surveyor.

5. All canvas scenery, and all woodwork that may be deemed necessary, shall be painted with fire-resisting paint in such manner as may be required by the licensing committee. All ironwork used in construction shall be protected against the action of fire to the satisfaction of the county surveyor.

6. The staircases and the floors of the passages, lobbies, corridors, and landings shall be of fire-resisting materials. Every staircase for the use of the audience shall be supported and enclosed by brick walls. The treads of each flight of stairs shall be of uniform width. No staircase, internal corridor, or passage-way for the use of the audience, shall be less than four feet six inches wide. Every staircase, corridor, or passage-way for the use of the audience, shall be increased in width by six inches for every additional hundred persons over four hundred, until a maximum width of nine feet be obtained. In every case where the staircases are six feet wide and upwards, a dividing handrail shall be provided.

7. A clear passage or gangway, of not less than three feet wide, shall, at all times, be reserved round every part appropriated to the audience, or in such other position as the committee, on the advice of the county surveyor, may determine.

8. In all cases where a portion of the audience is to be accommodated in a gallery, or over others of the audience,

a separate means of exit, of the width above prescribed for staircases, internal corridors, or passage-ways, and communicating directly with the street, shall be provided from each floor or level.

9. All doors and barriers shall be made to open outwards, and all bolts used for securing them shall be either of the kind known as "monkey tail," or automatic bolts, which shall be affixed on the inside only of the door.

10. All openings for ventilation shall be shewn on the plans, and properly described in the specifications, so to be lodged as aforesaid, and openings shall be made in such places, and in such manner, as may be approved by the licensing committee.

11. No workshop, or painting-room, shall be formed or constructed over the auditorium, or in the space under it.

12. There shall be provided (a) an ample water supply, with hose, hydrants, and branches, of the size and pattern used by the Metropolitan or Local Fire Brigade to be available to reach all parts of the building, and, where possible, on the high-pressure main; (b) on the top of the proscenium wall, when there is one, or at some place to be approved by the licensing committee, two cisterns, each capable of containing at least two hundred and fifty gallons of water for every hundred persons of the audience to be accommodated in the premises. Fire mains shall be connected with these cisterns and extend round the whole circuit of the building, and be fitted with hydrants in such places and manner as may be approved by the licensing committee.

13. All gas-pipes shall be made of iron or brass. No white-metal or composition pipes shall be used in any part of the premises. All fixed and ordinary gas-burners within six feet of the ground shall be furnished with efficient guards. Where there is a stage or wings with scenery, the footlights or floats to be protected by a wire guard. The rows or lines of gas-burners at wings, to be protected by wire guards also, and to commence four feet at least from the level of the stage.

14. Proper cloak-rooms, w.c.'s, and lavatory accommodation, for both sexes, shall be provided.

15. When the premises sought to be licensed form a part only of a building, the premises shall be separated

from the other parts of the building by proper party walls or party structures.

16. The licensing committee may, from time to time, in any *special* case, dispense with, or modify these building regulations upon application for dispensation or modification in writing, to be addressed to the licensing committee and containing a full statement of the facts of the particular case, and of the reasons upon which any such application rests.

17. Unless the licensing committee shall otherwise order, every unsuccessful applicant for a license for premises which have never been previously licensed by the committee, shall be entitled to have his plans returned to him.

LIQUOR LICENSING REGULATIONS, CITY OF LONDON.

CONFIRMATION OF NEW LICENSES.

Rules as to proceedings for confirmation of new licenses and other matters, made pursuant to the Licensing Act, 1872, by Her Majesty's justices of the peace for the said city (being a borough for the purposes of the said Act), at a meeting duly convened and held at Guildhall, in the said city, on the 28th day of February, 1873.

1. Whenever the licensing committee at the general annual licensing meeting, or at any adjournment thereof, shall grant any new license under the powers of the Intoxicating Liquors Licensing Acts, or either of them, the clerk of the licensing justices shall retain and submit all such licenses for confirmation to the justices of the said city (being the confirming authority in this behalf, and hereinafter called the "confirming justices"), assembled at the meeting held for the purpose of confirming such licenses, together with any memorial, statement, or other evidence produced by the applicant to the licensing committee in support of, or by any person in opposition to, the application for such license. Such clerk shall at the same time transmit a list of all such licenses, annexing thereto a certificate that the requisite notices and advertisements required by

law were proved to the satisfaction of the licensing committee to have been duly served and published.

2. Any person having appeared before the licensing committee and opposed the grant of any new license (but no other person), and who intends to oppose the confirmation of any such grant, shall, within three days after the grant of such license, give notice to the applicant for such license, and also to the clerk of the licensing justices, by registered letter, of such his intention (35 and 36 Vict. c. 94, § 43).

3. Any such person as last mentioned giving the requisite notice of opposition shall, within the three days mentioned in Rule 2, deposit with the clerk of the licensing justices the sum of £10, to secure the payment of all costs that may be ordered by the confirming justices to be paid by such person, pursuant to these rules and § 43 of the Licensing Act, 1872.

4. It shall not be necessary for the applicant to produce to the confirming justices any evidence of the due service and publication of the requisite notices and advertisements before the grant of such license (35 & 36 Vict. c. 94, § 40, sub.-sect. 1; 32 & 33 Vict. c. 27, § 7; 33 & 34 Vict. § 4, sub.-sect. 1).

5. The clerk of the licensing justices shall in every year, within seven days before the 5th of April, convene by notice in writing a meeting of the confirming justices, to be held at Guildhall, to be held on such day and at such hour as shall be fixed by the licensing committee, for the purpose of considering the confirmation of the grant of such new licenses, and shall give the like notice of such meeting, by a registered letter, to every applicant for such license, and to all persons who shall have given notice of opposition and complied with Rules 2 and 3.

6. Every such applicant shall, unless he shall shew lawful excuse for his absence, attend the meeting of the confirming justices in person; and any person who has opposed before the licensing committee the grant of a new license, and complied with Rules 2 and 3, but no other person, may attend such meeting and oppose the confirmation of such grant (35 & 36 Vict. c. 94, § 43).

7. Any person entitled by Rules 2 and 3 to oppose the confirmation of the grant of any license who shall fail to

appear before the confirming justices, or appearing shall be unsuccessful in his opposition to such confirmation, shall pay to the applicant for such license such costs as to the confirming justices shall seem just, and such justices shall award payment thereof accordingly, and the amount thereof shall be paid by the clerk of the licensing justices out of the money deposited, and the overplus, if any, repaid to the person opposing such confirmation (35 & 36 Vict. c. 94, § 43).

8. Upon the confirmation of the grant of a new license the applicant shall pay, on the delivery of such license to him, to the clerk of the licensing justices (in addition to the fees payable by law in respect of such license), the sum of £1 1s. for every public-house license, and the sum of 10s. 6d. for every other license, for the expenses incident to such confirmation.

9. All applicants for the confirmation of the grant of new licenses, and persons opposing such confirmation, may appear either by counsel or in person; and the ordinary rules of procedure upon similar applications when made before justices in quarter sessions are to be observed, as far as practicable, at the meetings of the confirming justices.

10. Any person other than the owner interested in any licensed premises as mortgagee or otherwise shall, upon payment of the sum of 5s., be entitled to have his name inserted in the register of licenses, and shall then receive a similar notice to that which the owner of such premises is entitled under the Licensing Act, 1872 (33 & 36 Vict. c. 94, § 56), upon payment of a fee of 2s. 6d. for each notice given.

11. These rules shall apply to applications for the confirmation of an order made by the licensing committee sanctioning the removal of a license from one part of the city to another part thereof, under § 50 of the Licensing Act, 1872.

HENRY F. YOULE,
Clerk of the Licensing Justices.

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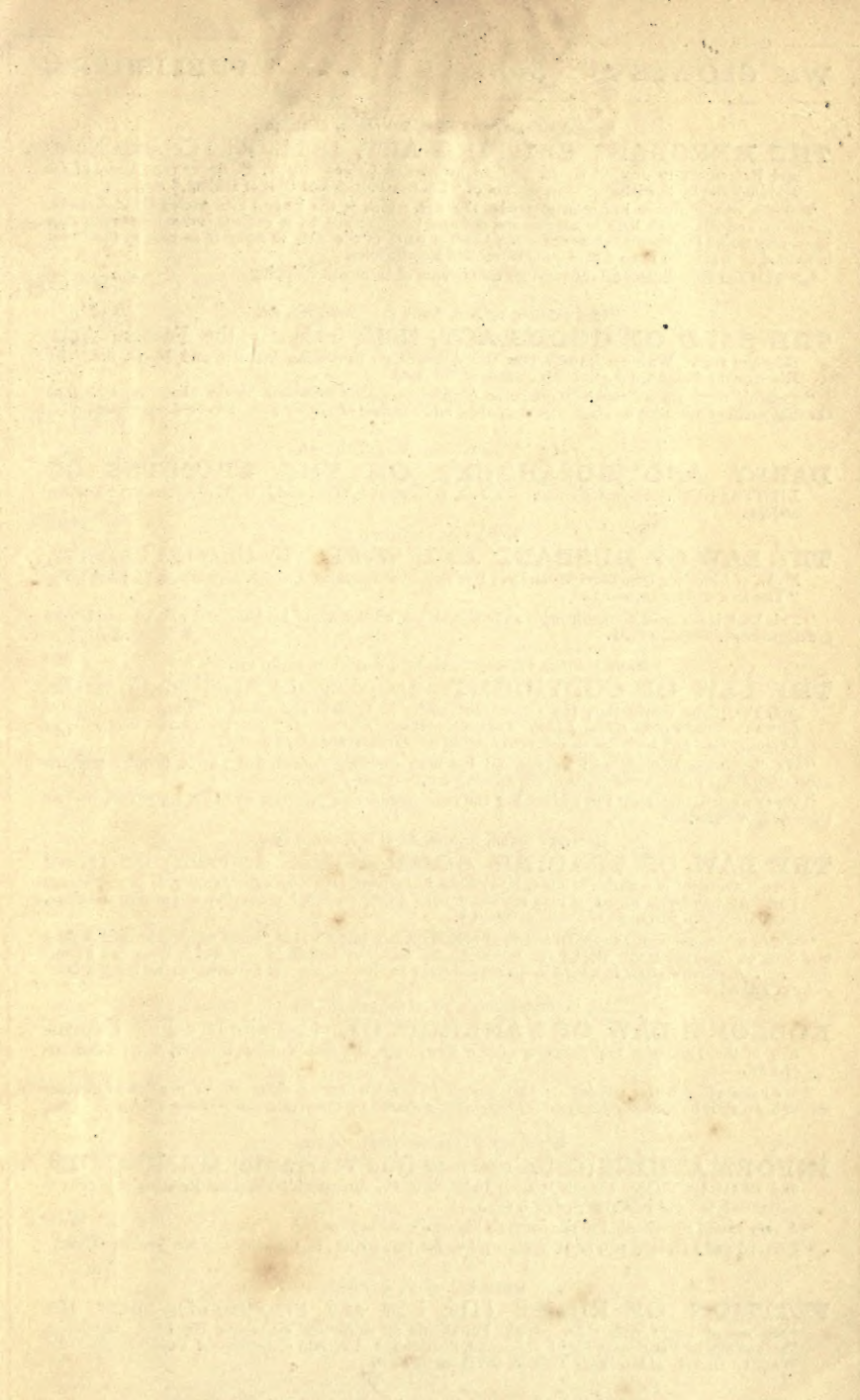
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THE END.



WM. CLOW

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PETITION C

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EVANS v. THE JUSTICES OF CONWAY.—Judgment was
 given in this licensing appeal. The facts were shortly
 these:—Mr. Evans had appealed to the Carnarvon-
 shire Quarter Sessions against a decision of the
 Licensing Justices sitting at the annual licensing
 meeting, held at Carnarvon on September 25, 1899,
 refusing to renew the licence to him of the Royal Oak
 Inn, Conway. Before the licensing meeting the re-
 newal had been opposed by the Rev. Gwynedd Roberts,
 but at the hearing before the Justices at Quarter Ses-
 sions objection was taken by the Appellant that, by
 the decision in Boulter's case, the Solicitor for the
 objector had no *locus standi*, and that, as no one
 appeared on behalf of the Licensing Justices, he was
 entitled to have his appeal allowed, there being no
 evidence before the Court to the contrary. The Court
 of Quarter Sessions overruled this contention,
 and decided to hear the appeal. The Appellant's
 Counsel having formally proved that due notice
 of the appeal had been served upon all the Justices
 who sat at the adjourned general annual licensing
 meeting, and that the Appellant, together with two
 sureties, had duly entered into the required recog-
 nisances, applied for the renewal. The Justices, how-
 ever, refused the application, and the question was
 whether the Court of Quarter Sessions had jurisdiction
 to do so, in the absence of any evidence being given
 against the licence being renewed. Mr. Evans then
 appealed to the Divisional Court, and the Judges, with
 some doubt, affirmed the decision of the Quarter Ses-
 sions. Hence the present appeal.

Mr. Alderson Foote, Q.C., and Mr. Trevor Lloyd
 appeared for the Appellant; Mr. Asquith, Q.C., and
 Mr. Ellis J. Griffith for the Respondents.

Lord Justice A. L. Smith, who delivered the con-
 sidered opinion of the Court, said the question was
 whether, when a publican appealed to a Court
 of Quarter Sessions, which he was clearly entitled to
 do, against the refusal of a licensing meeting
 to grant him a renewal of his licence, the Court of
 Quarter Sessions could refuse to grant him such
 renewal without any evidence whatever being given as
 to why such renewal should be granted. The con-
 clusion the Court of Appeal had come to was that the
 Court of Quarter Sessions could not do so, and for
 this reason. By the provisions of Section 42 of the
 Licensing Act, 1872, both as to the notice of objection
 which must be given and as to evidence which must be
 forthcoming, if a man complied with them he was
 entitled to have his appeal heard and decided on its
 merits.

Issue of the usual allowance under the Volunteer Regu-
 lation Act, 1900, for the expenses of travelling, and
 for the expenses of attending on the sick in the
 military hospitals for the days on which they are so
 employed. Travelling expenses will be met by the
 ranks actually employed in attending on the sick in
 and departure. Corps pay will only be issued to all
 the actual days in camp, including the days of arrival
 to all ranks who earn the special grant for
 rates laid down by the Royal Army Medical Corps will
 cent. of the corps fulfil this condition. Pay at the
 must be week days, provided that at least 50 per
 special exercise for at least 14 full days, 12 of which
 member who attends in camp during the period of
 grant of £2 2s. will be allowed to the Corps for each
 Corps duties, whether in barracks or camps. A special
 training will be devoted to Royal Army Medical
 themselves of this opportunity of gaining instruction.
 remain as long as possible in camp, so as to avail
 their command and to attend in large numbers, and to
 Officers will appeal to the patriotism of all ranks under
 the Commander in Chief trusts that Commanding
 formed, during this year, for a period of 28 days, and
 Bearer Companies being exercised in camps to be
 Medical Staff Corps and Volunteer Infantry Brigade

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